

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
YAVAPAI COUNTY, ARIZONA

FOR THE COUNTY OF YAVAPAI

2017 FEB -7 AM 9:22

SANDRA K HARRIS, CLERK

BY: Jacqueline Marshman

STATE OF ARIZONA,

Plaintiff,

VS.

JAMES ARTHUR RAY,

Defendant .

) Case No. V1300CR201080049

) Court of Appeals

) Case No. 1 CA-CR 11-0895

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW

TRIAL DAY SEVEN

MARCH 1, 2011

Camp Verde, Arizona

(Partial transcript.)

ORIGINAL

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI
3
4 STATE OF ARIZONA,)
5 Plaintiff,)
6 vs) Case No. V1300CR201080049
7 JAMES ARTHUR RAY,) Court of Appeals
8 Defendant.) Case No 1 CA-CR 11-0895
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14 REPORTER'S TRANSCRIPT OF PROCEEDINGS
15 BEFORE THE HONORABLE WARREN R DARROW
16 TRIAL DAY SEVEN
17 MARCH 1, 2011
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19 (Partial transcript)
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REPORTED BY
MINA G. HUNT
AZ CR NO 50619
CA CSR NO 8335

Mina G Hunt (928) 554-8522

1 Proceedings had before the Honorable
2 WARREN R DARROW, Judge, taken on Tuesday, March 1,
3 2011, at Yavapai County Superior Court,
4 Division Pro Tem B, 2840 North Commonwealth Drive,
5 Camp Verde, Arizona, before Mina G. Hunt, Certified
6 Reporter within and for the State of Arizona.
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9

9 (This transcript is the complete
10 proceedings of Trial Day Seven, March 1, 2011, with
11 the exception of sealed proceedings.)
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Mina G Hunt (928) 554-8522

1 APPEARANCES OF COUNSEL

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Mina G Hunt (928) 554-8522

1 PROCEEDINGS

2 (Partial transcript -- resuming following
3 sealed proceedings.)

10:14:44AM 4 THE COURT: We are on the record in the
10:14:48AM 5 State of Arizona versus James Arthur Ray, with
10:14:49AM 6 Mr. Ray present represented by Mr. Li, Mr. Brian
10:14:53AM 7 and Ms. Do. And the state is represented by
10:14:57AM 8 Mr. Hughes and Ms. Polk.

10:14:59AM 9 We can continue with the pretrial. There
10:15:00AM 10 was a juror who called in and was -- his wife
10:15:05AM 11 called in. He was very ill, feels better and is on
10:15:08AM 12 his way. So we should have the full complement of
10:15:12AM 13 the jurors who can be sworn in when we start the
10:15:17AM 14 actual trial session.

10:15:18AM 15 But I just wanted to conduct pretrial at
10:15:23AM 16 this time.

10:15:23AM 17 And, Lionel, if you would help me out and
10:15:27AM 18 distribute some preliminary instructions.

10:15:31AM 19 And also I've got some copies of the
10:15:34AM 20 indictment in the form that the clerk will read the
10:15:37AM 21 charges. I would like you to look at those now
10:15:51AM 22 There were some suggestions for changes that were
10:15:55AM 23 made by the defense. And some of them were
10:16:02AM 24 appropriate, in my view.

10:16:04AM 25 I want you to make whatever records you

Mina G Hunt (928) 554-8522

1 want to, Mr. Li. The main thing I did not add was
2 the causation at this point. If you wanted to make
3 further record on a preliminary instruction as to
4 causation, please do so.

5 MR. LI: Your Honor, causation is an important
6 issue in this case. We feel the jurors should be
7 aware of it throughout the trial. I would like to
8 reference it in opening. And it's the standard
9 instruction. It will be given at the end of the
10 case. It is a relevant issue to this case, and
11 we'd ask that the Court include it in the
12 preliminary instruction.

13 THE COURT: Mr. Hughes?

14 MR. HUGHES: Your Honor, with respect to
15 causation, certainly causation is an issue.
16 However, the defendant's language regarding cause,
17 I guess, we think is not the appropriate language
18 that should be provided. Nor does it need to be
19 provided in the preliminary instructions. In the
20 final instructions we would be asking the Court
21 provide the standard RAJI causation instruction.

22 This causation instruction, however,
23 leaves out the "but for" test, which is the test
24 that the statute sets forth. And it also does not
25 track the RAJI, which includes the "but for" test.

Mina G Hunt (928) 554-8522

1 Your Honor, there is another issue we may
2 need to be heard on. That's my argument on the
3 causation issue.

4 THE COURT: I'm not going to put the causation
5 instruction in the preliminary instructions. The
6 other changes had to do with updating language on
7 right not to testify. I put that language in
8 there. And if you just look over those as soon as
9 we close the pretrial and make sure there are not
10 any other concerns. I'd ask you do that so we can
11 get the copies made in time to get started.

12 With regard to the reading of the
13 charges, Lionel, if you would distribute those to
14 both parties.

15 For the reading of the charges,
16 basically, I ask the clerk to read the caption:
17 State of Arizona versus James Arthur Ray, and the
18 cause number, indictment -- and then just the Grand
19 Jurors of Yavapai County, Arizona -- read as it's
20 stated there and go through each count. Instead of
21 reciting the statutes, say in violation of Arizona
22 law.

23 And then at the end just says dated,
24 signed true bill, foreman of the Grand Jury. No
25 mention of the name. And then the reading of the

Mina G. Hunt (928) 554-8522

1 plea of not guilty or the announcing of the plea of
2 not guilty afterwards.

3 Any problem with reading the charges and
4 the plea in that fashion?

5 MR. HUGHES: No, Your Honor.

6 MR. KELLY: Judge, I do have a comment in that
7 regard. I noticed some handwritten language on the
8 bottom. Members of the jury, to these charges the
9 defendant has entered a plea of not guilty. We
10 would request that my client's name be substituted
11 with "the defendant" consistent with the
12 indictment.

13 THE COURT: To these charge Mr. Ray has
14 entered a plea of not guilty.

15 Tania, go ahead and make those changes.

16 With regard to various legal issues, I
17 wanted to cover those and just ask counsel first if
18 there is anything of a legal nature you want to
19 raise and have addressed, Mr. Hughes or Ms. Polk,
20 specifically that's on your mind.

21 I'm going to ask both sides that. I
22 don't want to sit here and go through things I'm
23 concerned with if people think there is another
24 issue that needs to be addressed that's of more
25 urgency.

Mina G Hunt (928) 554-8522

1 MS. POLK: Your Honor, the state would like to
2 hear from the Court first. If there is other
3 issues out there, we would request at that time to
4 raise them.

5 THE COURT: Okay. I talked about 404(b). But
6 in looking at the opening statements, there was a
7 motion out concerning postsweat lodge conduct and
8 statements of people who worked with Mr. Ray or
9 JRI. And I was drafting a written ruling on that.
10 And there was the litigation that came up with
11 regard to considering 404(b) in the context of
12 negligent homicide as opposed to strictly
13 manslaughter. The two issues are related.

14 With regard to postsweat lodge conduct,
15 that is -- with regard to the pre2009 events, that
16 is closely tied to the 404(b) ruling. As I've
17 indicated briefly in chambers, I want this on the
18 record here in this pretrial.

19 The 404(b) issue is different in the
20 context of negligence. I think if the charge --
21 the one charge had been that of criminal
22 negligence, I think a lot of that evidence would
23 have come in with regard to that.

24 I see a distinction because of the
25 manslaughter charge, the greater charge, and having

Mina G. Hunt (928) 554-8522

10:21:52AM 1 evidence that doesn't directly relate to the
 10:21:56AM 2 manslaughter and the issue of knowledge and notice
 10:21:59AM 3 in the manslaughter context.

10:22:01AM 4 I also mentioned that some of this
 10:22:04AM 5 evidence seems to be uncontested. By that I don't
 10:22:10AM 6 just mean it's uncontested but not relevant. It
 10:22:15AM 7 appears to me that it's discussed that it's
 10:22:17AM 8 something that's just going to be part of this
 10:22:19AM 9 trial.

10:22:19AM 10 So outside of the 404(b) context there
 10:22:23AM 11 may be instances where references to other sweat
 10:22:28AM 12 lodge information could be appropriate. And I
 10:22:33AM 13 dealt with the issue as it was given to me, a
 10:22:36AM 14 404(b) issue of these prior things happened almost
 10:22:40AM 15 in the nature of being prior bad acts. And I don't
 10:22:46AM 16 think that's the only way they could be
 10:22:50AM 17 characterized.

10:22:51AM 18 I want to make clear that if there is
 10:22:57AM 19 testimony about level or there is evidence
 10:23:00AM 20 presented concerning the level of Mr. Ray's
 10:23:05AM 21 knowledge and that's given in the context of the
 10:23:07AM 22 defense case, there may be evidence in the form of
 10:23:11AM 23 rebuttal regarding that.

10:23:17AM 24 And I think, Mr. Li, you know what I'm
 10:23:20AM 25 talking about. If there is a characterization of

Mina G. Hunt (928) 554-8522

10:23:24AM 1 the level of knowledge concerning what happens in
 10:23:28AM 2 these activities, I could see that -- I don't like
 10:23:34AM 3 to use the phrase "opening the door." I think
 10:23:36AM 4 everyone can get a graphic image of that. That's a
 10:23:40AM 5 possibility.

10:23:40AM 6 Right now my original ruling, 404(b), it
 10:23:45AM 7 stands with regard to just having evidence come in
 10:23:48AM 8 to show this for the purpose of showing this
 10:23:54AM 9 allegedly repetitive recklessness.

10:23:58AM 10 MR. LI: Your Honor, I appreciate the Court's
 10:24:01AM 11 ruling. If I could just get some clarification so
 10:24:04AM 12 that I don't inadvertently step into some problem.
 10:24:09AM 13 Is the Court saying obviously it's -- one of the
 10:24:13AM 14 defenses here is that Mr. Ray did not know that
 10:24:17AM 15 people were dying. Otherwise he would have stopped
 10:24:20AM 16 the event. That has been consistent throughout
 10:24:25AM 17 this case.

10:24:26AM 18 We would not view that as a discussion
 10:24:28AM 19 about prior sweat lodges. We would just be looking
 10:24:32AM 20 at 2009 and saying here's the evidence in 2009.
 10:24:36AM 21 Here's all the evidence that shows Mr. Ray in 2009
 10:24:42AM 22 did not know what was happening.

10:24:45AM 23 That is not a reference to prior
 10:24:48AM 24 incidents. And we just want to make absolutely
 10:24:48AM 25 clear that that is an element of the defense --

Mina G. Hunt (928) 554-8522

10:24:52AM 1 we're not going to be referencing prior sweat
 10:24:54AM 2 lodges as a basis for the fact that he didn't know
 10:24:58AM 3 what was happening in 2009. If we do that, I
 10:24:59AM 4 assume that we will be complying with the Court's
 10:25:05AM 5 order.

10:25:06AM 6 If I may just be clear. He's charged
 10:25:08AM 7 with knowingly disregarding substantial and
 10:25:13AM 8 unjustifiable risk of death. And Mr. Ray is -- his
 10:25:18AM 9 defense, among others, is going to be that he did
 10:25:22AM 10 not knowingly disregard that. Because he didn't
 10:25:24AM 11 know it was happening. And I, think, frankly,
 10:25:27AM 12 nobody knew it was happening.

10:25:31AM 13 THE COURT: Ms. Polk?

10:25:34AM 14 MS. POLK: Your Honor, I think that is exactly
 10:25:37AM 15 the issue why the prior sweat lodge events are
 10:25:41AM 16 relevant. What Mr. Li is suggesting is a mechanism
 10:25:45AM 17 to deliberately mislead the jury about the level of
 10:25:48AM 18 the defendant's knowledge. I understand the
 10:25:50AM 19 Court's ruling. I will abide by the Court's
 10:25:52AM 20 ruling.

10:25:52AM 21 But to give the defense this blanket
 10:25:56AM 22 permission right now to start talking about the
 10:25:59AM 23 defendant's level of knowledge, that he had no
 10:26:02AM 24 knowledge that people were dying, for example, I
 10:26:04AM 25 think would be unfair. And it would allow them to

Mina G. Hunt (928) 554-8522

10:26:08AM 1 go down a path of misleading the jury about the
 10:26:11AM 2 level of the defendant's knowledge and what his
 10:26:14AM 3 knowledge meant and what the information that he
 10:26:16AM 4 has, that he's processing at the time -- what they,
 10:26:20AM 5 as the trier of fact, can conclude as to whether or
 10:26:23AM 6 not it's reckless.

10:26:25AM 7 MR. LI: Your Honor, the defendant, Mr. Ray,
 10:26:27AM 8 has a right to defend against each element of the
 10:26:32AM 9 charge. And simply denying that there was
 10:26:35AM 10 knowledge that in 2009 three people were actually
 10:26:40AM 11 dying does not open the door to prior incidents.

10:26:45AM 12 For all the reasons that are in the
 10:26:48AM 13 Court's ruling, in the Court's 404(b) ruling, the
 10:26:51AM 14 evidence that the state adduced at the three days
 10:26:54AM 15 of hearings with live witnesses -- and I was
 10:26:58AM 16 incorrect. There were actually six witnesses who
 10:27:01AM 17 testified at that event -- is that there were --
 10:27:04AM 18 people did exhibit symptoms, but that these
 10:27:07AM 19 symptoms -- this is the Court's ruling. I don't
 10:27:10AM 20 have it in front of me. That these symptoms did
 10:27:14AM 21 not -- would not lead a reasonable person to think
 10:27:16AM 22 that they were at risk of dying.

10:27:19AM 23 None of the people, including this Daniel
 10:27:23AM 24 P., exhibited symptoms that were in any way
 10:27:27AM 25 considered life threatening.

Mina G. Hunt (928) 554-8522

10:27:28AM 1 The state failed to carry its burden
 10:27:33AM 2 under Terrazas by clear and convincing evidence.
 10:27:35AM 3 For that reason that evidence was ruled
 10:27:42AM 4 inadmissible.

10:27:46AM 5 The fact that Mr. Ray has a right to
 10:27:48AM 6 fight each and every element of the charge that is
 10:27:49AM 7 currently posed against him doesn't open the door,
 10:27:53AM 8 provided that we don't reference prior sweat lodge
 10:27:58AM 9 incidents. We're talking about 2009, the actual
 10:28:03AM 10 evidence of this particular case.

10:28:09AM 11 THE COURT: What I'm saying is that there is
 10:28:11AM 12 some -- I've got to go back to what I was saying
 10:28:14AM 13 before about being, essentially, uncontested and
 10:28:18AM 14 something that's going to be part of this.

10:28:20AM 15 In referencing your voir dire, Mr. Li,
 10:28:22AM 16 and asking what jurors felt about exertion and
 10:28:25AM 17 physical symptoms, the state has evidence in the
 10:28:29AM 18 form of statements from Mr. Ray about what he
 10:28:32AM 19 expected in a sweat lodge event, about what he
 10:28:37AM 20 would expect to see in people. That's the way I
 10:28:41AM 21 understand it.

10:28:42AM 22 And there would be a problem with the
 10:28:51AM 23 presentation indicating that there was no kind of
 10:28:54AM 24 indication of any kind of problem ever before,
 10:28:58AM 25 something like that.

Mina G Hunt (928) 554-8522

10:29:01AM 1 That kind of a statement is going to open
 10:29:03AM 2 the door for what had happened in prior events.
 10:29:07AM 3 But what happened in prior events, essentially, I
 10:29:10AM 4 see as being discussed in the tape, for example, or
 10:29:14AM 5 in the recording. Those kinds of things are
 10:29:16AM 6 discussed and somewhat expected.

10:29:19AM 7 It appears both Mr. Ray -- I make that
 10:29:21AM 8 qualification in terms of these rulings. I'm not
 10:29:24AM 9 commenting on the evidence. I'm trying to decide
 10:29:27AM 10 these rather close and difficult evidentiary
 10:29:31AM 11 issues.

10:29:31AM 12 But it appears, from what I've seen, both
 10:29:33AM 13 Mr. Ray and the participants had an expectation of
 10:29:37AM 14 a physically challenging event and that there could
 10:29:43AM 15 be symptoms. And, in fact, there were symptoms.

10:29:45AM 16 And if there is some implication that
 10:29:47AM 17 there weren't these kinds of signs and symptoms
 10:29:51AM 18 ever before at some level, there is nothing
 10:29:55AM 19 happened that would ever look like even a start of
 10:29:57AM 20 a medical issue or to the level they actually
 10:30:00AM 21 occurred and are discussed -- if that were the
 10:30:05AM 22 implication, the state would be able to bring in
 10:30:08AM 23 rebuttal witnesses to what did take place.

10:30:08AM 24 But they would have to be actual
 10:30:10AM 25 witnesses, Ms. Polk, that -- you know --

Mina G Hunt (928) 554-8522

10:30:14AM 1 observed -- you know. The foundation would have to
 10:30:17AM 2 be there is what I'm saying.

10:30:19AM 3 And there is also the issue of knowledge
 10:30:21AM 4 as well, a person did Mr. Ray know. Because the
 10:30:26AM 5 case wasn't charged as a negligence case. If
 10:30:28AM 6 you're talking about a negligence case, even a
 10:30:31AM 7 criminal negligence case, you have a whole
 10:30:34AM 8 different set of issues than when you talk about a
 10:30:38AM 9 manslaughter charge. And that difference has
 10:30:43AM 10 really complicated this.

10:30:45AM 11 MR. LI: Your Honor, I think I understand the
 10:30:48AM 12 Court's ruling. And we will not reference -- we
 10:30:49AM 13 will not say that in prior -- we won't talk about
 10:30:51AM 14 prior sweat lodges at all. We'll talk about 2009.

10:30:58AM 15 THE COURT: I'm saying that if there is some
 10:31:01AM 16 indication that there was just no knowledge of
 10:31:06AM 17 possible medical issues whatsoever, that's going to
 10:31:12AM 18 probably trigger evidence coming in or the ability
 10:31:16AM 19 to bring in evidence to the contrary.

10:31:18AM 20 MR. LI: I want to follow the Court's ruling
 10:31:20AM 21 exactly. So I want to be very clear about what I
 10:31:23AM 22 mean. And so I don't want to make a mistake.

10:31:26AM 23 THE COURT: I understand.

10:31:27AM 24 MR. LI: What I mean is that Mr. Ray's defense
 10:31:32AM 25 is that he did not know people were dying. It's

Mina G Hunt (928) 554-8522

10:31:36AM 1 not that there were no medical issues at all but
 10:31:41AM 2 that it's precisely what the element of the charge
 10:31:43AM 3 is, that he knowingly, consciously disregarded
 10:31:46AM 4 unjustified and substantial risk of death.

10:31:48AM 5 And we will say that he did not know that
 10:31:50AM 6 people were dying and will not mention he didn't
 10:31:53AM 7 know that people didn't have any medical issues at
 10:31:57AM 8 all, that people didn't throw up. There will be
 10:31:59AM 9 none of that.

10:32:00AM 10 It will be just focused narrowly like a
 10:32:04AM 11 laser on the issue of whether or not Mr. Ray knew
 10:32:06AM 12 that in 2009 during the sweat lodge people were
 10:32:09AM 13 dying. And we'll deny that.

10:32:15AM 14 THE COURT: Ms. Polk?

10:32:17AM 15 MS. POLK: Your Honor, I'd like to respond to
 10:32:19AM 16 that, because the issue, the mental state and the
 10:32:22AM 17 issue of the defendant's knowledge, is a jury
 10:32:26AM 18 question. And to stand up in front of the jury and
 10:32:27AM 19 assert that the defendant did not have any
 10:32:30AM 20 knowledge that people were dying -- that's the
 10:32:32AM 21 question for the jury based on all the evidence.

10:32:35AM 22 So to allow the defense to assert that
 10:32:38AM 23 but not then to allow the state to counter that
 10:32:41AM 24 with what knowledge he did have -- and from that
 10:32:45AM 25 evidence the jury can conclude that Mr. Ray did, in

Mina G Hunt (928) 554-8522

10 32 49AM 1 fact, have knowledge that people were dying.
 10 32 50AM 2 The standard is a reasonable-person
 10 32 54AM 3 standard. It's an objective, not a subjective
 10 33 00AM 4 standard. It's a reasonable-person standard. And
 10 33 04AM 5 it's a reasonable person with this defendant's
 10 33 06AM 6 training and experience.
 10 33 06AM 7 The case law is clear that that is a jury
 10 33 06AM 8 question. So if the defense is going to talk about
 10 33 08AM 9 what the defendant knew, the jury gets to hear all
 10 33 11AM 10 the evidence. They get to decide what the
 10 33 15AM 11 defendant knew and if he knew whether or not people
 10 33 17AM 12 were dying.
 10 33 18AM 13 I agree with the Court that that opens
 10 33 21AM 14 the door, then, to the state to rebut that
 10 33 24AM 15 assertion that he didn't know people were dying by
 10 33 28AM 16 offering to the jury what the defendant knew, what
 10 33 30AM 17 we can prove he knew when he was in that sweat
 10 33 33AM 18 lodge with all of his training and experience.
 10 33 35AM 19 THE COURT: Mr. Li, just a minute. I give
 10 33 37AM 20 everybody a chance. Because this is really a vital
 10 33 40AM 21 issue. It's something that warranted oral argument
 10 33 43AM 22 before after the briefings. You recall there was
 10 33 50AM 23 extensive briefing after the hearing, and then it
 10 33 53AM 24 was submitted.
 10 33 54AM 25 Ms. Polk, the problem is you get into a
 Mina G Hunt (928) 554-8522

10 34 09AM 1 403 aspect of this of having a whole lot of
 10 34 02AM 2 evidence that, essentially, in my view, would go to
 10 34 04AM 3 negligence, arguably criminal negligence, but goes
 10 34 09AM 4 to negligence. Having all of that to, basically,
 10 34 12AM 5 say this is the evidence, he had to know people
 10 34 16AM 6 were dying, when I haven't seen one medical record.
 10 34 19AM 7 There was one set of medical records
 10 34 23AM 8 where one person went to the hospital who clearly
 10 34 25AM 9 was not dying. And no one ever has said anything
 10 34 27AM 10 otherwise. And then sweat lodge events involving
 10 34 31AM 11 how many people over seven years, six or seven
 10 34 34AM 12 years. 200-and-some -- I don't know -- who never
 10 34 38AM 13 went to a doctor, that I know of, never sought
 10 34 42AM 14 medical help.
 10 34 43AM 15 To bring that in as evidence now in that
 10 34 47AM 16 form, that yes, he knew people were dying, that's
 10 34 51AM 17 to say this is all evidence these people were
 10 34 53AM 18 dying -- are you arguing that in that 404(b)
 10 34 57AM 19 hearing all of that evidence showed that those
 10 34 59AM 20 people were dying?
 10 35 01AM 21 MS. POLK: All of that evidence, Your Honor,
 10 35 06AM 22 goes to the defendant's level of knowledge. Then
 10 35 08AM 23 it's a jury question for them to decide whether or
 10 35 09AM 24 not based on all the information he had in 2009,
 10 35 13AM 25 including his experience with all of the prior
 Mina G Hunt (928) 554-8522

10 35 16AM 1 sweat lodge experiences, whether all that
 10 35 19AM 2 information, he should have known that his conduct
 10 35 22AM 3 was causing death.
 10 35 23AM 4 THE COURT: You said it. He should have
 10 35 27AM 5 known. That's the criminal negligence.
 10 35 28AM 6 MS. POLK: Let me take it the next step
 10 35 31AM 7 further, which is, then, based on that, did he
 10 35 33AM 8 know. Did he know that his conduct -- I believe
 10 35 35AM 9 the test under the law is did he know that his
 10 35 37AM 10 conduct could cause death.
 10 35 40AM 11 Your Honor, I want to address the
 10 35 42AM 12 negligent homicide versus the manslaughter issue.
 10 35 45AM 13 We have given to the Court the rules and the cases
 10 35 50AM 14 that explain that when you indict somebody on the
 10 35 55AM 15 greater offense, the lesser offense is necessarily
 10 35 58AM 16 subsumed.
 10 35 59AM 17 THE COURT: Okay. I said that in my ruling,
 10 36 01AM 18 as a matter of fact, that that wasn't addressed,
 10 36 03AM 19 that cited the case that said -- and the rule. I
 10 36 05AM 20 mean, the rule that just says that it's charged.
 10 36 09AM 21 So if you're saying notice, the defense is on
 10 36 11AM 22 notice of the possibility of that charge. They're
 10 36 14AM 23 on notice if you're saying that.
 10 36 16AM 24 MS. POLK: That. But I'm also saying that the
 10 36 18AM 25 state has the right to present our evidence that
 Mina G Hunt (928) 554-8522

10 36 22AM 1 shows the negligent homicide. For example, if you
 10 36 24AM 2 have a first degree murder case and the jury is
 10 36 27AM 3 going to come back with second degree, you get to
 10 36 30AM 4 present to the jury all the evidence that would
 10 36 32AM 5 support that second degree as well as the first
 10 36 35AM 6 degree. It's subsumed in the evidence.
 10 36 37AM 7 It's an unusual or rare situation where a
 10 36 41AM 8 court would be saying well, it's relevant to a
 10 36 44AM 9 lesser included offense, but it's too prejudicial
 10 36 47AM 10 on a greater offense.
 10 36 48AM 11 If the state -- if the Court accepts, and
 10 36 51AM 12 it sounds like the Court is in agreement with the
 10 36 53AM 13 state, that the offense of negligent homicide is
 10 36 58AM 14 subsumed in the greater offense, that the state has
 10 37 00AM 15 the right to present evidence on that offense as
 10 37 02AM 16 well, then we have the right to present that
 10 37 05AM 17 evidence.
 10 37 05AM 18 And to preclude us from presenting
 10 37 07AM 19 evidence on the lesser offense because we charged
 10 37 11AM 20 the greater offense, even though the jury will get
 10 37 13AM 21 to consider the lesser offense, is fundamentally
 10 37 17AM 22 unfair.
 10 37 17AM 23 THE COURT: Ms. Polk, as a matter of the rule,
 10 37 19AM 24 the defense is on notice of negligent homicide.
 10 37 23AM 25 But as noted in the briefing, the negligent
 Mina G Hunt (928) 554-8522

10 37 25AM 1 homicide charged does not necessarily go to a jury
 10 37 30AM 2 every time there is a manslaughter or greater
 10 37 32AM 3 charge.

10 37 38AM 4 I've just said I had a case that was
 10 37 40AM 5 charged all the way from first degree down to
 10 37 42AM 6 negligent homicide. And the issue is this: If you
 10 37 44AM 7 have a lot of 404(b) evidence as only relevant to
 10 37 46AM 8 the negligence case, how does that come in, all of
 10 37 48AM 9 that, if the case were charged all the way up to
 10 37 50AM 10 first degree?

10 37 52AM 11 Let's just separate the two charges even
 10 37 54AM 12 more. If the 404(b) evidence, essentially, goes to
 10 37 56AM 13 a negligent standard so somebody should have known
 10 38 02AM 14 from these various things, not what he did know or
 10 38 04AM 15 she did know, but what you should know, you bring
 10 38 06AM 16 in a lot of that evidence and somehow say that this
 10 38 08AM 17 is a lot of prior bad acts, and you've got this
 10 38 10AM 18 first degree murder charge up there where that
 10 38 12AM 19 other evidence has nothing to do with that. That's
 10 38 14AM 20 the dilemma in this case in the very unusual
 10 38 16AM 21 posture.

10 38 18AM 22 MS. POLK: Your Honor, I agree that you don't
 10 38 20AM 23 necessarily get the lesser included if the evidence
 10 38 22AM 24 doesn't support it. In this case I believe
 10 38 24AM 25 everyone can agree that it does because what we're

Mina G Hunt (928) 554-8522

10 38 40AM 1 talking about is the distinction in the requisite
 10 38 42AM 2 mental state.

10 38 44AM 3 We're not talking about a disagreement
 10 38 46AM 4 about the facts. The distinction between negligent
 10 38 48AM 5 homicide and manslaughter is this very issue. Did
 10 38 50AM 6 he consciously disregard the substantial and
 10 38 52AM 7 unjustifiable risk or did he fail to perceive? So
 10 38 54AM 8 that's the difference.

10 38 56AM 9 All the evidence is relevant to both of
 10 39 02AM 10 those mental states. Clearly this is a case where
 10 39 04AM 11 the jury would get the negligent homicide charge as
 10 39 06AM 12 well as the manslaughter charge. And the state
 10 39 08AM 13 will be asking for it.

10 39 10AM 14 I understand the Court's concerned about
 10 39 12AM 15 cumulative evidence. The state does not intend to
 10 39 14AM 16 have a trial within a trial. We do not intend to
 10 39 16AM 17 present all of the witnesses and the evidence that
 10 39 18AM 18 we presented at the 404(b). That was a different
 10 39 20AM 19 proceeding. And the Court obviously has the right
 10 39 22AM 20 at any time to tell the state that our evidence is
 10 39 24AM 21 cumulative.

10 39 26AM 22 So the issue is not -- if the Court's
 10 39 28AM 23 concern is that we have all this additional
 10 39 30AM 24 evidence coming in, I can assure the Court that we
 10 39 32AM 25 will not.

Mina G. Hunt (928) 554-8522

10 39 46AM 1 The issue, as the Court correctly noted,
 10 39 48AM 2 is that much of this information comes out through
 10 39 50AM 3 the witnesses who are the witnesses in the current
 10 39 52AM 4 sweat lodge. We have people in the 2009 sweat
 10 39 54AM 5 lodge who will testify in this trial. If they
 10 39 56AM 6 don't get to talk about what happened on prior
 10 40 02AM 7 events, we will shut them down. But it's not like
 10 40 04AM 8 we would be bringing in additional witnesses.

10 40 06AM 9 These witnesses were there on previous
 10 40 08AM 10 occasions and they were there in 2009 -- for
 10 40 10AM 11 example, the Mercers, who were there in 2007, 2008
 10 40 12AM 12 and 2009.

10 40 14AM 13 THE COURT: That to me -- again, I dealt with
 10 40 16AM 14 this issue as a 404(b) issue. If you're saying
 10 40 18AM 15 you're going to have some people that were at
 10 40 20AM 16 multiple events, that's what you're saying, that's
 10 40 22AM 17 a different question as to what -- how they
 10 40 24AM 18 experienced the 2009, what they had to compare it
 10 40 26AM 19 to. That's a different kind of issue. That's not
 10 40 28AM 20 a 404(b) issue that I see.

10 40 30AM 21 MS. POLK: And, Your Honor, if I can just
 10 40 32AM 22 finish. I do agree with that. When you analyze
 10 40 34AM 23 whether or not something is 404(b), typically what
 10 40 36AM 24 we look at, are the events so intertwined,
 10 40 38AM 25 entangled, with the current -- evidence of the

Mina G Hunt (928) 554-8522

10 41 01AM 1 current crime that they come in.

10 41 03AM 2 And I agree with the Court that much of
 10 41 05AM 3 the state's evidence that could be 404(b) is also
 10 41 07AM 4 intertwined and it would come in. "Intrinsic" is
 10 41 09AM 5 the word I'm looking for. Separate from that there
 10 41 11AM 6 are other instances that are not intrinsic.

10 41 13AM 7 When we talk about the Mercers'
 10 41 15AM 8 testimony, for example, the Mercers were there in
 10 41 17AM 9 the three previous years. They were there when
 10 41 19AM 10 Mr. Ray conducted his sweat lodge ceremonies. They
 10 41 21AM 11 were there when other people used that same sweat
 10 41 23AM 12 lodge structure, and there were no incidents that
 10 41 25AM 13 would be relevant, and that would come in. So I do
 10 41 27AM 14 agree with what the Court just said.

10 41 29AM 15 THE COURT: Mr. Li?

10 41 31AM 16 MR. LI: Your Honor, this is exactly the same
 10 41 33AM 17 argument the state made back in November or -- it's
 10 41 35AM 18 literally exactly the same argument that the state
 10 41 37AM 19 made in November about admitting these prior acts.

10 41 39AM 20 It is also -- the witnesses that the
 10 41 41AM 21 state's describing -- the Mercers, Hamiltons --
 10 41 43AM 22 these are exactly the same witnesses. Mark Rock.
 10 41 45AM 23 These are exactly the same witnesses that the state
 10 41 47AM 24 brought in and testified before this court.

10 41 49AM 25 And this court found that the state

Mina G Hunt (928) 554-8522

1 failed to carry it's burden by clear and convincing
 2 evidence that they experienced -- that they
 3 witnessed medical issues that would put someone on
 4 notice of a risk of death. These are exactly the
 5 same witnesses. And literally Ms. Polk's argument
 6 is exactly the same.

7 The point that we were just trying to
 8 deal with right here, Your Honor, is whether or not
 9 we could as a defense rebut the single issue
 10 about -- which is an element of the charge about
 11 whether or not Mr. Ray subjectively knew. Not
 12 objectively. Ms. Polk said objectively. It is not
 13 an objective standard for reckless manslaughter.
 14 It's a subjective standard.

15 THE COURT: True.

16 MR. LI: So the question is did Mr. Ray have
 17 the subjective knowledge that people in 2009 -- not
 18 any other incidents. In 2009 did he know
 19 subjectively that people were dying? And we have
 20 every right to argue that he didn't. And we will
 21 not reference any prior events as buttressing that.

22 Let me turn this argument around for a
 23 second. We could, Your Honor, I think, argue that
 24 look. Mr. Ray had done these sweat lodges since
 25 2003. And nobody for the 200-plus people who
 Mina G Hunt (928) 554-8522

1 participated in these events, nobody except for one
 2 person went to the hospital. That one person --
 3 essentially, this was his treatment: They hosed
 4 him off. They brushed the sand off him and sent
 5 him on his way.

6 We could argue, therefore, how could
 7 Mr. Ray have known in 2009 that anybody was dying?
 8 We're not even going to make that argument because
 9 we will abide by the Court's ruling.

10 So it's not that all of these -- the
 11 state presumes that all these prior incidents are
 12 so horrible that we would -- that we're desperately
 13 trying to keep it out. The Court has made a ruling
 14 that's very efficient that makes sense. And it
 15 narrowly focuses this whole trial on 2009.

16 That's all we want to do is talk about
 17 what Mr. Ray's subjective knowledge was in 2009.
 18 Did he or did he not know that people were dying?
 19 He didn't. And us arguing that doesn't open the
 20 door -- without more us arguing that, without more,
 21 does not open the door to any of the prior events.

22 THE COURT: In terms of 404(b), yes. If there
 23 is testimony or evidence -- I don't know if you're
 24 going to present a case or not. But if there is
 25 evidence to the effect that these various things

Mina G. Hunt (928) 554-8522

1 were expected, which I think there is going to be
 2 evidence of that in terms of the exertion, then
 3 there probably would not be any opening of the
 4 door.

5 But if there is some portrayal that there
 6 just was nothing at all -- it needs to be an
 7 accurate portrayal about the level of knowledge.
 8 It can't go the other way. It can't go the other
 9 way that there is just absolutely nothing, that
 10 everybody got out and had a picnic or something
 11 right away, or that kind of portrayal is going to
 12 open the door. If there is not an acknowledgment
 13 of what the evidence is concerning the level of
 14 knowledge, there is the potential for opening the
 15 door.

16 Do you understand.

17 MR. LI: I absolutely understand the Court's
 18 ruling. I want to make absolutely clear we're not
 19 going to do that. We're going to focus on 2009 and
 20 the events within the sweat lodge within the two
 21 and a half hours, two hours, inside the sweat
 22 lodge, what happened there. We're not going to
 23 talk about prior incidents. We're not going to do
 24 that.

25 We are, essentially, going to say that
 Mina G Hunt (928) 554-8522

1 Mr. Ray did not know that in 2009 at 4:35 p.m. on
 2 October 8 that anybody was dying. And we're not
 3 going to reference prior events. That is
 4 absolutely permissible, Your Honor.

5 THE COURT: Well, I'm saying there is a
 6 potential for opening the door if there is a
 7 mischaracterization -- there appears to be a
 8 mischaracterization of a level of Mr. Ray's
 9 knowledge going the other way.

10 MR. LI: Understood.

11 THE COURT: There is no idea of a problem.
 12 And it doesn't have to be that extreme either.

13 MR. LI: Understood.

14 THE COURT: Okay.

15 MR. LI: I understand. Thank you.

16 THE COURT: If you're saying he specifically
 17 did not know, I made the ruling. That was the
 18 distinction. There are a lot of "should have"
 19 questions when you look at that other evidence,
 20 perhaps of the pre2009.

21 But actually knowing based on that
 22 evidence -- that was the distinction made in the
 23 ruling. Again, there is a potential for opening
 24 the door. And I've made the notice on that.

25 Anything else on that issue?

Mina G. Hunt (928) 554-8522

10 47 31AM 1 MR. LI: No, Your Honor.
 10 47 32AM 2 THE COURT: Ms. Polk?
 10 47 35AM 3 MS. POLK: No, Your Honor. Thank you.
 10 48 00AM 4 THE COURT: With regard to postsweat lodge
 10 48 05AM 5 events, that's what I started talking about, the
 10 47 43AM 6 pre2009 as governed by the 404(b) ruling. The 2009
 10 47 51AM 7 event is governed by basic rules of evidence and
 10 47 57AM 8 what happened through the event itself and then the
 10 48 03AM 9 immediate time afterwards when people are there, in
 10 48 06AM 10 terms of actual observation, just what Mr. Ray did
 10 48 13AM 11 in terms of observation when it still was a scene,
 10 48 17AM 12 when there is still people being taken care of. I
 10 48 20AM 13 think that's just part of completing the event.
 10 48 23AM 14 However, what I'm concerned about is some
 10 48 25AM 15 kind of testimony that tries to get into some
 10 48 30AM 16 speculation in judgmental view of what might have
 10 48 36AM 17 been in someone's mind. That's what I'm concerned
 10 48 39AM 18 about.
 10 48 39AM 19 In terms of the events, everything
 10 48 41AM 20 doesn't stop the minute people are outside. Up
 10 48 46AM 21 until the time Mr. Ray leaves, I think that can be
 10 48 50AM 22 discussed. That's just part of the actual incident
 10 48 54AM 23 itself. And that's about all I can say. I don't
 10 49 01AM 24 know exactly what evidence.
 10 49 02AM 25 No one actually told me what the evidence
 Mina G. Hunt (928) 554-8522

10 49 06AM 1 might be except the defense suggested somewhat what
 10 49 10AM 2 is suspected. Things about not rendering medical
 10 49 14AM 3 care or something like that.
 10 49 15AM 4 Is that the type of evidence you're going
 10 49 17AM 5 to want to offer.
 10 49 18AM 6 MS. POLK: Yes, Your Honor.
 10 49 19AM 7 THE COURT: Not rendering medical care?
 10 49 22AM 8 MS. POLK: Your Honor, the defendant's
 10 49 24AM 9 postsweat lodge conduct is relevant on a number of
 10 49 27AM 10 fronts. One is to show his condition when he comes
 10 49 30AM 11 out of the sweat lodge. What does he do? Is he
 10 49 33AM 12 lucid? Is he walking as opposed to unconscious on
 10 49 37AM 13 a tarp, for example?
 10 49 38AM 14 And there will be testimony from many
 10 49 40AM 15 participants about his physical appearance and what
 10 49 44AM 16 he did. And that would be relevant to his state of
 10 49 47AM 17 mind, obviously both inside and outside the sweat
 10 49 52AM 18 lodge.
 10 49 52AM 19 In addition to that there will be
 10 49 53AM 20 testimony about what he did or did not do in terms
 10 49 56AM 21 of rendering aid, rendering assistance, rendering
 10 50 02AM 22 or offering information to the first responders to
 10 50 05AM 23 help them triage and diagnose the scene and figure
 10 50 10AM 24 out what kind of care they needed to immediately
 10 50 10AM 25 focus on giving.
 Mina G. Hunt (928) 554-8522

10 50 11AM 1 So along those lines, that's what -- I
 10 50 15AM 2 agree with the Court. I think what you said is
 10 50 17AM 3 accurate, that it is relevant on a number of
 10 50 18AM 4 fronts.
 10 50 20AM 5 THE COURT: But it has to be strictly
 10 50 23AM 6 observational.
 10 50 24AM 7 Mr. Li?
 10 50 25AM 8 MR. LI: I agree with the Court's ruling to
 10 50 28AM 9 the extent that people are describing strictly
 10 50 30AM 10 observational things. But there is a couple issues
 10 50 33AM 11 here. One is many of the witnesses are --
 10 50 37AM 12 attribute various characteristics to those direct
 10 50 40AM 13 observations. And I would ask that the state be --
 10 50 44AM 14 that the state not seek to elicit that type of
 10 50 46AM 15 testimony, No. 1; and, No. 2, that witnesses be
 10 50 50AM 16 stopped from attributing certain characteristics.
 10 50 54AM 17 Second is to the extent the state wants
 10 50 57AM 18 to elicit testimony from one particular emergency
 10 51 01AM 19 responder or another one that in their particular
 10 51 04AM 20 experience Mr. Ray didn't offer any advice or
 10 51 08AM 21 information, it's somewhat unfair.
 10 51 12AM 22 Because there were a lot of people who
 10 51 14AM 23 responded to that. In fact, there is evidence that
 10 51 16AM 24 Mr. Ray actually did render assistance. And just
 10 51 19AM 25 because one person in the midst of a chaotic scene
 Mina G. Hunt (928) 554-8522

10 51 24AM 1 did not hear Mr. Ray offer that assistance doesn't
 10 51 28AM 2 mean that he, in fact, didn't.
 10 51 30AM 3 And there is a prejudicial characteristic
 10 51 33AM 4 that goes with it. Because I have listened to
 10 51 36AM 5 hundred of hours of tapes of various witnesses.
 10 51 40AM 6 And some of them -- you know -- ascribe very bad
 10 51 43AM 7 motives to Mr. Ray, which are simply not true. And
 10 51 46AM 8 those are the things we are seeking to avoid
 10 51 49AM 9 infecting this jury.
 10 52 00AM 10 THE COURT: Ms. Polk, witnesses just have to
 10 52 04AM 11 avoid making some kind of judgmental pronouncement
 10 52 07AM 12 about what somebody was or wasn't doing. It's what
 10 52 10AM 13 somebody was doing. The actual descriptions of
 10 52 17AM 14 Mr. Ray, actual observations -- those are
 10 52 21AM 15 admissible while things are still taking place on
 10 52 24AM 16 the scene. I don't know how else I would say it
 10 52 29AM 17 than that.
 10 52 30AM 18 And it has to do with foundation. The
 10 52 32AM 19 ability to observe, not speculate, as to why
 10 52 36AM 20 somebody was or wasn't doing something. Whether
 10 52 40AM 21 somebody should be doing something, that's another
 10 52 41AM 22 thing that could come in. And that would be
 10 52 42AM 23 improper as well -- what somebody thought somebody
 10 52 47AM 24 should have been doing. That is a jury issue.
 10 52 51AM 25 I can't think of a trial where anybody
 Mina G. Hunt (928) 554-8522

10 52 54AM 1 was ever permitted to testify to that other than
 10 52 57AM 2 with regard to certain experts. And we'll talk
 10 53 00AM 3 about that in a minute too.

10 53 03AM 4 With regard to statements of JRI or
 10 53 06AM 5 Mr. Ray's Dream Team or other people who are with
 10 53 12AM 6 JRI, what happens during this event in the seminar
 10 53 21AM 7 is relevant to the state of mind of these people.

10 53 25AM 8 I do agree with the state that you cannot
 10 53 26AM 9 have vicarious liability for an act of an agent and
 10 53 35AM 10 have that apply in the criminal justice context.
 10 53 40AM 11 I'm never aware of that. Obviously when you're
 10 53 43AM 12 talking about corporate criminal liability, you
 10 53 50AM 13 would have to.

10 53 51AM 14 But what was done -- how people were
 10 53 54AM 15 instructed, for example, if somebody was encouraged
 10 53 58AM 16 to stay, that's admissible. That's just part of
 10 54 02AM 17 the mind-set of the people who were there. So that
 10 54 06AM 18 evidence is admissible.

10 54 08AM 19 You objected, Mr. Li.

10 54 12AM 20 MR. LI: Yeah. I'm sorry. So I guess at
 10 54 14AM 21 issue is if Tom tells somebody to go do something
 10 54 21AM 22 but I don't know anything about it, that
 10 54 24AM 23 evidence -- and I'm the person who is now on
 10 54 27AM 24 trial -- that evidence is inadmissible unless there
 10 54 30AM 25 is that link. That's the point that we're making.

Mina G. Hunt (928) 554-8522

10 54 32AM 1 THE COURT: There is a difference between
 10 54 33AM 2 inadmissible or what purpose the evidence is
 10 54 35AM 3 offered for. If you're talking about why people
 10 54 38AM 4 were reacting a certain way in the sweat lodge --
 10 54 45AM 5 you know -- the background of that. And it isn't
 10 54 49AM 6 just background. What goes into the mind-set has
 10 54 52AM 7 to come in. It can come in. It might be a matter
 10 54 55AM 8 of instructing. I can see that.

10 54 58AM 9 MR. LI: It might come in if there was the
 10 55 01AM 10 causal link between Mr. Kelly and myself. If I
 10 55 07AM 11 knew that that's what was happening and I was aware
 10 55 11AM 12 of the participants' state of mind.

10 55 17AM 13 And this is exactly the same as the
 10 55 19AM 14 Court's ruling on financial issues. If there is
 10 55 22AM 15 evidence that I -- the defendant is aware of the
 10 55 27AM 16 state of mind of various people, I suppose it might
 10 55 31AM 17 come in.

10 55 31AM 18 But if that causal link isn't made, which
 10 55 35AM 19 we would submit it isn't, then it doesn't come in.

10 55 38AM 20 THE COURT: Of course, once again, the
 10 55 41AM 21 difference between manslaughter and criminal
 10 55 46AM 22 negligence, if criminal negligence were the only
 10 55 52AM 23 issue, then you possibly do get into things as
 10 55 55AM 24 training, what people know, what they should know.

The other issue the state has reasoned

Mina G. Hunt (928) 554-8522

10 56 58AM 1 here is the mind-set, the state of mind, of these
 10 56 00AM 2 people. It may be a matter -- as I said, it may be
 10 56 03AM 3 a matter of a special instruction as to not
 10 56 06AM 4 imputing that. But as to why people were doing
 10 56 08AM 5 what they were doing in the sweat lodge, how they
 10 56 10AM 6 were reacting, what occurred, is part of what
 10 56 13AM 7 happened.

10 56 14AM 8 I agree that you can't -- if somebody
 10 56 18AM 9 doesn't know what someone else does, it's not
 10 56 21AM 10 like -- you know -- within the scope of employment
 10 56 23AM 11 in a civil case. It's not like that. But it does
 10 56 28AM 12 explain perhaps or could be relevant to why people
 10 56 32AM 13 were doing what they were doing in a sweat lodge.

10 56 34AM 14 MR. LI: Let me give you an example. There
 10 56 38AM 15 aren't facts like this. But what if one of the
 10 56 41AM 16 witnesses, the state's witnesses, who is a
 10 56 43AM 17 volunteer, says that -- you know -- I told them to
 10 56 48AM 18 stay in there even to the point of being
 10 56 52AM 19 unconscious? Okay? How can that be relevant in a
 10 57 06AM 20 criminal case against Mr. Ray?

10 57 08AM 21 THE COURT: I'm just trying to get the right
 10 57 11AM 22 ruling.

10 57 11AM 23 Ms. Polk, how would that be relevant?

10 57 14AM 24 MS. POLK: Your Honor, I think you have the
 10 57 16AM 25 right ruling. I don't believe the evidence in this

Mina G. Hunt (928) 554-8522

10 57 18AM 1 case will show that. But they certainly would have
 10 57 20AM 2 the right to cross-examine the witness to establish
 10 57 23AM 3 that somehow whatever information is being elicited
 10 57 27AM 4 from the stand the defendant did not know about it.
 10 57 30AM 5 That would be a proper area for cross-examination.

10 57 34AM 6 What the evidence in this trial will be,
 10 57 35AM 7 however, is that from the beginning the defendant
 10 57 38AM 8 is setting up and conditioning participants and his
 10 57 48AM 9 Dream Team to act and believe in a certain way.
 10 57 50AM 10 And to the extent statement are made by Dream Team,
 10 57 53AM 11 the statements are consistent with what the
 10 57 58AM 12 defendant has taught them from day one of this
 10 57 58AM 13 event as well as prior events that we're not going
 10 58 00AM 14 to be going into.

10 58 02AM 15 Dream Team members, by definition,
 10 58 04AM 16 attended prior events. So they have been trained
 10 58 07AM 17 and conditioned and influenced by the defendant to
 10 58 11AM 18 behave in a certain way, to act in a certain way
 10 58 14AM 19 and to say certain things.

10 58 15AM 20 But to the extent that Mr. Li believes
 10 58 18AM 21 that the defendant had no knowledge or did not
 10 58 21AM 22 support what a particular Dream Team member or
 10 58 25AM 23 staff member said, certainly they can cover that on
 10 58 27AM 24 cross-examination. That would be fair game.

10 58 30AM 25 MR. LI: There is a prejudice aspect, Your

Mina G. Hunt (928) 554-8522

10 58 32AM 1 Honor.

10 58 32AM 2 THE COURT: A fairness aspect or --

10 58 34AM 3 MR. LI: A fairness aspect and a prejudice

10 58 36AM 4 aspect. I'll give you one example that did come

10 58 38AM 5 up. And I don't recall the year. There was one

10 58 40AM 6 incident where one of the Dream Teamers sort of was

10 58 42AM 7 pushing, physically pushing.

10 58 44AM 8 THE COURT: Right. That's what I'm thinking

10 58 46AM 9 of. I'm thinking that might be the main item of

10 58 48AM 10 evidence that falls in this classification -- or

10 58 50AM 11 proposed evidence.

10 58 52AM 12 MR. LI: And this is exactly the point.

10 58 54AM 13 Nobody is telling people to push people back into

10 58 56AM 14 the lodge. There is absolutely no evidence at all

10 58 58AM 15 that Mr. Ray at any part of his program involved

10 59 00AM 16 physically pushing somebody back into the lodge.

10 59 02AM 17 Even if you take the state's theory on

10 59 04AM 18 its face -- which, frankly, I obviously disagree

10 59 06AM 19 strongly with the state's characterization of what

10 59 08AM 20 these programs were about and whether these adults

10 59 10AM 21 could choose for themselves.

10 59 12AM 22 But there will be no evidence whatsoever

10 59 14AM 23 that Mr. Ray is telling people to shove people back

10 59 16AM 24 into the lodge. Somebody does that and there is a

10 59 18AM 25 prejudicial effect that might taint Mr. Ray. And

Mina G Hunt (928) 554-8522

10 59 46AM 1 that was the basis for this motion. If there is

10 59 48AM 2 evidence where Mr. Ray says push him back in,

10 59 50AM 3 that's a different question.

10 59 52AM 4 But this is almost sort of employee

10 59 54AM 5 liability in a criminal case, which doesn't exist

10 59 56AM 6 absent very specific circumstances.

11 00 01AM 7 THE COURT: The one case cited by the state --

11 00 03AM 8 it was curious. It almost seems to indicate that.

11 00 05AM 9 I agree with the citation from the treaties in your

11 00 07AM 10 brief.

11 00 09AM 11 MR. LI: The sewage case?

11 00 11AM 12 THE COURT: No. The Far West --

11 00 13AM 13 MR. LI: Yes. That's the sewage case.

11 00 15AM 14 THE COURT: There was a different case. It

11 00 17AM 15 wasn't that. It was an older case that indicated

11 00 19AM 16 there could be -- almost suggested a vicarious

11 00 21AM 17 liability aspect. And I just -- it's not clear

11 00 23AM 18 from the case, but that can't be in this setting.

11 00 25AM 19 Again -- well, not again. Another aspect

11 00 27AM 20 I thought a lot about as an issue is why people are

11 00 29AM 21 not doing things in the lodge. You know, this is

11 00 31AM 22 the argument of the state. People are not --

11 00 33AM 23 they're acting contrary to instinct. What goes

11 00 35AM 24 into that mind-set is potentially relevant if there

11 00 37AM 25 are people telling them what to do, and the way to

Mina G Hunt (928) 554-8522

11 01 13AM 1 remedy that is through cross-examination what they

11 01 15AM 2 actually know.

11 01 17AM 3 And the other thing is I can only decide

11 01 19AM 4 so much in a pretrial context too. So I'm just

11 01 21AM 5 saying I agree absolutely there can be no imputed

11 01 23AM 6 criminal liability. But the facts that go into how

11 01 25AM 7 people were thinking in that sweat lodge, what they

11 01 27AM 8 were experiencing -- that's relevant evidence and

11 01 29AM 9 also in earlier parts of the seminar perhaps as

11 01 31AM 10 well.

11 01 33AM 11 And if they were acting pursuant to

11 01 35AM 12 instruction, then that wouldn't be just imputed.

11 01 37AM 13 If someone is instructed to act a certain way, then

11 01 39AM 14 that wouldn't be imputed either.

11 01 41AM 15 MR. LI: Your Honor, just on the issue of a

11 01 43AM 16 pushing, this is a witness that the state is not

11 01 45AM 17 going to call. So you're going to have --

11 01 47AM 18 THE COURT: Mina needs a break. Just getting

11 01 49AM 19 a little --

11 02 01AM 20 MR. LI: I'll make this quick. Okay. So this

11 02 03AM 21 witness is one of the Dream Teamers who the state

11 02 05AM 22 has elected not to call. In her interview she says

11 02 07AM 23 I did that on my own. Okay.

11 02 09AM 24 But the state is going to have a witness,

11 02 11AM 25 probably Miss Mercer or somebody else, Miss Foster,

Mina G Hunt (928) 554-8522

11 02 27AM 1 who is going to testify, oh. And Marta Reyes was

11 02 29AM 2 shoving people in. That's exactly the sort of

11 02 31AM 3 prejudice that I'm talking about. There is no

11 02 33AM 4 evidence at all that that has anything to do with

11 02 35AM 5 what Mr. Ray's state of mind was. Those are the

11 02 37AM 6 kind of things we're seeking to preclude.

11 02 39AM 7 THE COURT: The state is telling me that there

11 02 41AM 8 will be evidence to the effect that that's what

11 02 43AM 9 they were encouraged to do themselves or trained to

11 02 45AM 10 do.

11 02 47AM 11 Ms. Polk?

11 02 49AM 12 MR. LI: To shove?

11 02 51AM 13 THE COURT: I don't know.

11 02 53AM 14 MS. POLK: No, Your Honor. I don't believe

11 02 55AM 15 the evidence would show that any staff member or

11 02 57AM 16 any Dream Team member was encouraged to physically

11 02 59AM 17 push participants back into the tent.

11 03 01AM 18 However, this information is relevant.

11 03 03AM 19 It's relevant to the mind-set of the participants

11 03 05AM 20 who see this going on, those who are outside or

11 03 07AM 21 those who are inside who might want to come out.

11 03 09AM 22 This is visible for everybody to see.

11 03 11AM 23 And, again, it is fair cross-examination

11 03 13AM 24 for the defense to establish that the defendant

11 03 15AM 25 never told them to push them but this is what's

Mina G Hunt (928) 554-8522

11:03:30AM 1 going on.
 11:03:31AM 2 Secondly, Your Honor, this act of
 11:03:33AM 3 pushing, continuing to try to make somebody go back
 11:03:35AM 4 in who didn't want to go back in, occurs right in
 11:03:37AM 5 front of the defendant. The defendant sits at the
 11:03:39AM 6 opening to this tent. When the tent is opened, he
 11:03:41AM 7 sits there. And right beside him one of his Dream
 11:03:43AM 8 Team members is trying to force a participant who
 11:03:45AM 9 has come out to come back in.

11:03:50AM 10 The evidence will be that Mr. Ray does
 11:03:52AM 11 not stop it. He doesn't say anything. He doesn't
 11:03:54AM 12 interfere. He doesn't say to Marta Reyes let her
 11:03:56AM 13 go. But it occurs right in front of him. It's
 11:03:58AM 14 relevant to his level of knowledge, to his
 11:04:00AM 15 mind-set, clearly relevant to the mind-set of other
 11:04:02AM 16 participants who might want to come out who are
 11:04:04AM 17 trying to.

11:04:10AM 18 The issue is going to be, apparently from
 11:04:12AM 19 what the defense is saying, that they are free to
 11:04:14AM 20 come and go. What witnesses see about this one
 11:04:16AM 21 witness being pushed back in is relevant to that.
 11:04:18AM 22 And, again, it is fair cross-examination for the
 11:04:20AM 23 defense to establish what the defendant himself
 11:04:22AM 24 knew or didn't know about that particular incident.

11:04:24AM 25 But that incident is part and parcel of
 Mina G Hunt (928) 554-8522

11:04:44AM 1 the entire week and in the events that occur around
 11:04:46AM 2 that sweat lodge eventually leading to the death of
 11:04:48AM 3 three people.

11:04:50AM 4 MR. LI: Here's the part that the state
 11:04:52AM 5 neglected to mention: Other Dream Teamers stopped
 11:04:54AM 6 this person, and the person who didn't want to go
 11:04:56AM 7 back in didn't go back in. That's the part that's
 11:04:58AM 8 not actually being mentioned here.

11:05:00AM 9 THE COURT: And that's why this is all really
 11:05:02AM 10 intensely factual. It's appropriate for the jury
 11:05:04AM 11 to hear all of the evidence in this context.

11:05:06AM 12 Really I need to take a recess. 10
 11:05:08AM 13 minutes. We should talk scheduling, though. I
 11:05:10AM 14 don't see starting the openings before lunch. By
 11:05:12AM 15 the time we go over the -- the preliminaries --
 11:05:14AM 16 that will take a few minutes.

11:05:16AM 17 There are a few other things to talk
 11:05:18AM 18 about. I would suggest we just plan on with
 11:05:20AM 19 swearing the jury and doing the prelims and
 11:05:22AM 20 openings at 1:30 and getting that announced right
 11:05:24AM 21 now and not having this uncertainty.

11:05:26AM 22 Ms. Polk?

11:05:28AM 23 MR. HUGHES: Your Honor, the state is okay
 11:05:30AM 24 with that. With respect to scheduling for after
 11:05:32AM 25 lunch, the information the Court had requested

Mina G Hunt (928) 554-8522

11:06:01AM 1 earlier in chambers -- we can provide that now.
 11:06:03AM 2 We've received it. I don't know if the Court
 11:06:05AM 3 wanted to allot some time prior to swearing in the
 11:06:07AM 4 jury to discuss that issue again.

11:06:09AM 5 THE COURT: If you have the information, yes.
 11:06:11AM 6 From the defense, Mr. Li, I think we
 11:06:13AM 7 ought to look at 1:30. That will give people a bit
 11:06:15AM 8 of time to contemplate the rulings that I'm
 11:06:17AM 9 formulating and governing opening.

11:06:20AM 10 MR. LI: That's fine, Your Honor.

11:06:22AM 11 THE COURT: Let's take a 10-minute recess.
 11:06:24AM 12 (Recess.)

11:06:26AM 13 THE COURT: We're back on the record. The
 11:06:28AM 14 defendant -- the attorneys present now are Mr. Li,
 11:06:30AM 15 Mr. Kelly, Ms. Seifter and Ms. Do; for the state
 11:06:32AM 16 Mr. Hughes and Ms. Polk.

11:06:34AM 17 We were just discussing evidentiary
 11:06:36AM 18 issues.

11:06:38AM 19 So the pretrial conference is being
 11:06:40AM 20 resumed with Mr. Ray and the attorneys present.
 11:06:42AM 21 And we were just talking about various legal
 11:06:44AM 22 issues. We talked over 404(b) and that question,
 11:06:46AM 23 postsweat lodge conduct, statements of people
 11:06:48AM 24 associated with Mr. Ray or JRI.

11:06:50AM 25 And the next thing I had on my list had
 Mina G Hunt (928) 554-8522

11:24:37AM 1 to do with expert testimony. With regard to one
 11:24:39AM 2 expert, Mr. Ross, I've indicated I have
 11:24:41AM 3 foundational issues at this time. If there was
 11:24:43AM 4 some thought of mentioning Mr. Ross in the opening,
 11:24:45AM 5 I don't know that his testimony ultimately would be
 11:24:47AM 6 admissible, Ms. Polk.

11:24:49AM 7 With regard to other experts, I don't
 11:24:51AM 8 know that there is any need to address them, the
 11:24:53AM 9 issues that are out there now. Those have been
 11:24:55AM 10 raised rather recently, some of them. But I need
 11:24:57AM 11 to know for purposes of the opening and what people
 11:24:59AM 12 want to say in opening, do you need to have
 11:25:01AM 13 guidance and a ruling on anything that has to do
 11:25:03AM 14 with use of an expert? The only thing I'm aware
 11:25:05AM 15 of, of course, is what has been presented in the
 11:25:07AM 16 written motions.

11:25:09AM 17 MR. LI: Defense doesn't.

11:25:11AM 18 MS. POLK: Your Honor, the state does not
 11:25:13AM 19 either.

11:25:15AM 20 THE COURT: Okay. Have you had a chance to
 11:25:17AM 21 look over the preliminary instructions that I
 11:25:19AM 22 handed out?

11:25:21AM 23 MR. LI: Yes, Your Honor.

11:25:23AM 24 THE COURT: Any other record than what was
 11:25:25AM 25 made previously?

Mina G Hunt (928) 554-8522

11:25:54AM 1 MR. LI: No, Your Honor.

11:25:55AM 2 THE COURT: Ms. Polk?

11:25:57AM 3 MR. HUGHES: No, Your Honor.

11:26:00AM 4 THE COURT: Ready to go on that. Are there

11:26:22AM 5 any particular issues regarding exhibits? Have

11:26:24AM 6 they all been marked? Anything that needs to be

11:26:24AM 7 discussed other than the general motion that was

11:26:27AM 8 filed very recently where the defense objected to a

11:26:32AM 9 number of exhibits? The state responded indicating

11:26:35AM 10 that that's something that really has to be dealt

11:26:37AM 11 with as issues arise in trial.

11:26:46AM 12 MS. POLK: I'm not aware of any issues

11:26:50AM 13 regarding the exhibits. And all the exhibits, from

11:26:51AM 14 the state's perspective, have been marked.

11:26:54AM 15 THE COURT: A couple of other things came in

11:26:56AM 16 as far as pretrial matters I just want to address.

11:27:00AM 17 I think both the defense and prosecution got an

11:27:08AM 18 email from Mitch Gold. My only comment about that

11:27:16AM 19 is there has been language used in this case and

11:27:22AM 20 will be during the trial. And it's just what has

11:27:25AM 21 been used. And it's not practical to try to adjust

11:27:30AM 22 that in some fashion.

11:27:33AM 23 I, of course, respect people's views of

11:27:37AM 24 the use of language. And I know no one wants to

11:27:41AM 25 offend anybody somehow. But these are terms that

Mina G Hunt (928) 554-8522

11:27:43AM 1 we are using to describe occurrences. And it's

11:27:48AM 2 just going to continue in that fashion.

11:27:50AM 3 Ms. Polk.

11:27:51AM 4 MS. POLK: Your Honor, the state is not

11:27:53AM 5 familiar with an email that you're referring to.

11:27:56AM 6 THE COURT: It was -- oh. I have extra

11:28:03AM 7 copies. I saw a long list of recipients. I

11:28:07AM 8 thought a number of attorneys were on there.

11:28:55AM 9 MR. HUGHES: Your Honor, is this the Court's

11:28:57AM 10 copy?

11:28:57AM 11 THE COURT: I made extra copies I was going to

11:29:00AM 12 hand out. I saw a list of recipients and just

11:29:03AM 13 assumed that everybody was on there. That's your

11:29:06AM 14 copy. Now you will know what I'm talking about.

11:29:45AM 15 MR. HUGHES: Your Honor, the state has had an

11:29:47AM 16 opportunity to read it.

11:29:48AM 17 THE COURT: Do you agree with my observations,

11:29:51AM 18 which is simply we use certain language as

11:29:53AM 19 descriptive? I just think it continues in that

11:29:56AM 20 fashion.

11:29:56AM 21 MR. HUGHES: I agree.

11:30:05AM 22 THE COURT: Okay. Then also you probably have

11:30:14AM 23 received another request for a second camera. Did

11:30:18AM 24 you get that request, Counsel?

11:30:18AM 25 MS. POLK: Yes, Your Honor.

Mina G Hunt (928) 554-8522

11:30:20AM 1 MR. LI: Yes, Your Honor.

11:30:22AM 2 THE COURT: Ms. Polk any comment about that

11:30:25AM 3 request?

11:30:28AM 4 MS. POLK: Your Honor, the state would object

11:30:27AM 5 to that second camera. We had a full on-the-record

11:30:31AM 6 discussion about all of the concerns, the

11:30:34AM 7 additional concerns that such a camera would bring.

11:30:37AM 8 And beyond that I have nothing further to add.

11:30:40AM 9 THE COURT: Mr. Li.

11:30:41AM 10 MR. LI: We'll submit, Your Honor.

11:30:42AM 11 THE COURT: I'm going to confirm the original

11:30:46AM 12 ruling. It will be under Rule 122 with one still

11:30:49AM 13 camera and one television camera.

11:30:54AM 14 Anything else to discuss as a matter of

11:31:06AM 15 pretrial issues?

11:31:07AM 16 MR. HUGHES: Your Honor, prior to the break a

11:31:09AM 17 few minutes ago, we did provide the clerk for

11:31:12AM 18 marking an exhibit pertaining to the issues that

11:31:15AM 19 were discussed in chambers. We ask that be sealed

11:31:18AM 20 for the same reasons those discussions were sealed.

11:31:22AM 21 THE COURT: And that's ordered.

11:31:23AM 22 MR. HUGHES: Your Honor, I would note that the

11:31:25AM 23 defense was provided a copy as well.

11:31:28AM 24 MR. LI: That's correct, Your Honor.

11:31:29AM 25 THE COURT: Anything else as a pretrial

Mina G. Hunt (928) 554-8522

11:31:30AM 1 matter?

11:31:32AM 2 MS. POLK: No, Your Honor.

11:31:33AM 3 MR. LI: Nothing, Your Honor.

11:31:34AM 4 THE COURT: Then I do want to start the actual

11:31:38AM 5 trial with the swearing in of the jury, the

11:31:43AM 6 preliminary instructions and then the opening. And

11:31:45AM 7 I'd like to start as near to 1:30 as possible on

11:31:48AM 8 that. I'm going to ask, though, that the attorneys

11:31:52AM 9 return at 1:00. And I think that matter will be

11:31:57AM 10 addressed at that time. I do need to see that

11:31:59AM 11 exhibit. Where is that?

11:32:01AM 12 MR. HUGHES: Your Honor, I provided it to the

11:32:03AM 13 clerk.

11:32:03AM 14 THE COURT: I need to see that. I wanted to

11:32:06AM 15 explain something. The pretrial conference -- of

11:32:08AM 16 course, this is all a public proceeding. And

11:32:12AM 17 anybody can be in here as long as there is seating

11:32:15AM 18 for these pretrial conferences.

11:32:17AM 19 However, it's not the actual trial. That

11:32:19AM 20 should be starting at 1:30. And we did have a

11:32:27AM 21 juror who was apparently quite ill over the weekend

11:32:30AM 22 but feels better and has come in. And I think

11:32:35AM 23 we'll be ready to start at 1:30.

11:32:37AM 24 Thank you. We'll be in recess.

11:32:37AM 25 (Recess.)

Mina G. Hunt (928) 554-8522

11 32 37AM 1 (Proceedings continued in presence of
01 32 28PM 2 jury.)
01 32 28PM 3 THE COURT: We are on the record in the case
01 32 28PM 4 of State of Arizona versus James Arthur Ray.
01 32 42PM 5 Mr. Ray is present with his attorneys, Luis Li, Tom
01 32 47PM 6 Kelly, Truc Do. The state is present represented
01 32 53PM 7 by Ms. Polk and Mr. Hughes. The jury is present.
01 32 55PM 8 At this time, ladies and gentlemen, I'm
01 32 55PM 9 asking that the jury please stand and be sworn.
01 33 16PM 10 (Whereupon, the jurors were sworn for
01 33 16PM 11 cause by the clerk.)
01 33 19PM 12 THE COURT: Thank you. Please be seated.
01 33 21PM 13 At this time the clerk will please read
01 33 21PM 14 the charges and announce the plea.
01 33 25PM 15 THE CLERK: In the Superior Court of the State
01 33 28PM 16 of Arizona, in and for the County of Yavapai, State
01 33 31PM 17 of Arizona, plaintiff, versus James Arthur Ray,
01 33 32PM 18 defendant; Superior Court No. V1300CR201080049,
01 33 42PM 19 indictment:
01 33 43PM 20 The Grand Jurors of Yavapai County,
01 33 45PM 21 Arizona, accuse James Arthur Ray, charging that in
01 33 48PM 22 Verde Valley Precinct, Yavapai County, State of
01 33 51PM 23 Arizona, Count I, manslaughter. On or about
01 33 54PM 24 October 8, 2009, James Arthur Ray recklessly caused
01 33 58PM 25 the death of Kirby Brown, in violation of Arizona
Mina G Hunt (928) 554-8522

01 34 02PM 1 law.
01 34 02PM 2 Count II, manslaughter. On or about
01 34 05PM 3 between October 8, 2009, and October 17, 2009,
01 34 11PM 4 James Arthur Ray recklessly caused the death of
01 34 14PM 5 Elizabeth Neuman, in violation of Arizona law.
01 34 17PM 6 Count III, manslaughter. On or about
01 34 20PM 7 October 8, 2009, James Arthur Ray recklessly caused
01 34 25PM 8 the death of James Shore, in violation of Arizona
01 34 28PM 9 law. Dated February 3, 2010, a true bill signed
01 34 34PM 10 foreman of the grand jury.
01 34 35PM 11 Members of the jury, to these charges
01 34 37PM 12 Mr. Ray has entered a plea of not guilty.
01 34 43PM 13 THE COURT: Thank you.
01 34 43PM 14 At this time, ladies and gentlemen, I'm
01 34 45PM 15 going to ask the bailiff to distribute the copies
01 34 48PM 16 of the preliminary instructions to the jury. And
01 34 51PM 17 while she's doing that, I'll give you some
01 34 53PM 18 instructions on those instructions.
01 34 55PM 19 You have notebooks to write in, to make
01 34 58PM 20 the notes that you want to as you proceed through
01 35 01PM 21 the case. And I have some instructions about that.
01 35 07PM 22 I just want to caution you, please don't write on
01 35 11PM 23 these instructions. You can if you want to just
01 35 14PM 24 make notes on them. You're free to do that, of
01 35 14PM 25 course.

Mina G. Hunt (928) 554-8522

01 35 14PM 1 But here's why I'm asking you not to do
01 35 18PM 2 that: You will be taking these instructions with
01 35 18PM 3 you. You can have them at recesses and go over
01 35 21PM 4 them. I don't want you to be distracted from the
01 35 23PM 5 trial by reading instructions when evidence is
01 35 28PM 6 being presented.
01 35 27PM 7 But you will be able to take the
01 35 29PM 8 instructions with you at recesses here in the
01 35 32PM 9 courtroom along with your notes. If you take
01 35 35PM 10 notes, though, on these copies, these are going to
01 35 38PM 11 be destroyed because the final instructions will be
01 35 42PM 12 the ones that actually control your deliberations.
01 35 47PM 13 So don't take notes, trial notes, on
01 35 49PM 14 these copies. Just want to bring that up from what
01 35 54PM 15 I've heard has happened in other instances. If you
01 35 58PM 16 have the preliminary instructions, you will be able
01 36 00PM 17 to keep these through the trial. You don't need to
01 36 03PM 18 make notes about them. You can read along if you
01 36 07PM 19 wish. I'm going to read through them.
01 36 10PM 20 Preliminary Instructions to the Jury:
01 36 13PM 21 Duty of Jury:
22 Ladies and gentlemen, now that you have
23 been sworn, I will tell you something about your
24 duties as jurors and give you some instructions.
25 At the end of the trial I will give you more
Mina G. Hunt (928) 554-8522

1 detailed instructions. Those final instructions
2 will replace these preliminary instructions and
3 control your deliberations.
4 It is your duty to determine what the
5 facts are in the case by determining what actually
6 happened. Determine the facts only from the
7 evidence produced in Court. When I say "evidence,"
8 I mean the testimony of witnesses and the exhibits
9 introduced in Court.
10 You should not speculate or guess about
11 any fact. You must not be influenced by sympathy
12 or prejudice. You must not be concerned with any
13 opinion that you feel I have about the facts. You,
14 as jurors, are the sole judges of what happened.
15 Importance of Jury Service. Jury service
16 is an important part of our system of justice, with
17 a long and distinguished tradition in western
18 civilization.
19 From the beginning, American law has
20 viewed the jury system as an effective means of
21 drawing on the collective wisdom, experience, and
22 fact-finding abilities of persons such as
23 yourselves.
24 While it may be an occasional
25 inconvenience, or worse, jury service is an
Mina G. Hunt (928) 554-8522

1 important responsibility for you, one that I am
2 sure you will take seriously.

01:37:34PM

01:37:34PM

3 Alternate Jurors. Members of the jury,
4 the law provides for a jury of twelve persons in a
5 case such as this. In any case, we have seated six
6 alternate jurors so that, if a juror becomes ill or
7 has a personal emergency, the trial can continue
8 without that juror.

9 Just because you are not one of the first
10 twelve jurors does not mean you are necessarily
11 going to be an alternate. The alternate will be
12 chosen by lot at the end of the case. Until then
13 each of you must consider yourself a juror in this
14 case. Please do not be concerned with who or may
15 not be an alternate.

01:38:18PM

16 No Transcript Available, Taking Notes.
17 At the end of the trial, you will have to make your
18 decision based on what you recall of the evidence.
19 You will not be given a written transcript of any
20 testimony. You should pay close attention to the
21 testimony as it is given.

22 You have been provided with note pads and
23 pencils. If you wish, you may take notes during
24 the trial. If you do take notes, please keep them
25 to yourself until you and your fellow jurors go to

Mina G Hunt (928) 554-8522

1 the jury room to decide the case.

2 Do not let note taking distract you so
3 that you miss hearing or seeing other testimony.
4 When you leave the jury box for a recess, leave
5 your notes in your seats.

6 Whether you take notes or not, you should
7 rely upon your own memory of what was said and not
8 be overly influenced by the notes of other jurors.

9 Do not be influenced at all by my taking
10 notes at times. What I write down may have nothing
11 to do with what you will be concerned with at this
12 trial.

13 You will be given the opportunity to ask
14 questions of the witnesses. After the lawyers have
15 finished their questions and before each witness is
16 excused from the stand, I will ask if any of the
17 jurors have questions for the witness.

18 If you have a question, write it on a
19 slip of paper. Do not sign it. The bailiff will
20 pick it up and hand it to me. The attorneys and I
21 will review the question, and I will determine
22 whether to pose the question.

23 If your question is not asked, it is no
24 reflection on the person offering the question. Do
25 not speculate on why the question was not asked.

Mina G Hunt (928) 554-8522

1 Admission of evidence in court is governed by rules
2 of law, and the Judge makes these determinations.

3 If you should have a general question
4 about the proceedings, a question you feel is
5 important enough to ask the Court, again, write it
6 down on a slip of paper without signing it and pass
7 it to the bailiff during recess or when you have
8 the opportunity. The bailiff will immediately
9 bring the question to me. It will be reviewed by
10 the attorneys and, if it can be answered, it will
11 be at an appropriate point in the trial. The
12 answer may refer you to instructions given or may
13 ask you to await final instructions.

14 In some cases the Court may not be able
15 to supply any answer and will so report.

16 Trial Schedule. The trial is expected to
17 last three to four months. Trial will be conducted
18 from Tuesday through Friday of each week until
19 concluded. If the trial is not completed by
20 May 12, trial will not be held from Friday, May 13,
21 to Wednesday, May 25. Trial would resume on
22 Thursday, May 26.

23 We will all do our best to move the case
24 along, but delays frequently occur. These will not
25 be anyone's fault, so do not hold them against the

Mina G. Hunt (928) 554-8522

1 parties. Delays usually occur because the
2 attorneys and I often need to resolve certain legal
3 matters before these matters may be presented to
4 you in court or because I am busy with emergency
5 matters in other cases.

6 The usual hours of trial will be from
7 9:00 a.m. to 12:00 noon and 1:30 p.m. to 5:00 p.m.
8 We will take a recess mid-morning and
9 mid-afternoon.

10 Unless a different starting time is
11 announced prior to recessing for the evening, you
12 may assume a starting time of 9:00 a.m. for the
13 next day.

14 If we can stop there just a minute at the
15 bottom of page 3 and tell you about scheduling.
16 When I announce a time, I mean that time to be the
17 time where you will actually be assembled in the
18 assembly area where Ms. Rybar instructs you.

19 If I say 1:30, I'm asking that you be
20 assembled at that time, not that we're going to be
21 right in court at 1:30. I want to start generally
22 within 5 to 10 minutes of when I announce that
23 specific time. That gives you a time of where to
24 be and when rather than trying to gauge -- you
25 know -- a certain amount of time before a start

Mina G. Hunt (928) 554-8522

01 42 07PM 1 time.

01 42 07PM 2 So that's what I mean when I say a time.

01 42 08PM 3 It's when you need to be assembled. And we'll come

01 42 09PM 4 into court as soon as we can after that.

01 42 10PM 5 If we can continue there at the bottom of

01 42 11PM 6 page 3.

01 42 12PM 7 Trials generally proceed in the following

01 42 13PM 8 order:

01 42 14PM 9 First, the prosecuting attorney will make

10 an opening statement which gives a preview of the

11 case. The defendant's attorney may make an opening

12 statement which outlines the defense's case. The

13 opening statement by the defendant's attorney may

14 be made immediately after the state's statement or

15 it may be postponed until after the state's case

16 has been presented.

17 What is said in opening statements is not

18 evidence nor is it an argument. The purpose of an

19 opening statement is to help you prepare for

20 anticipated evidence.

21 Second, the state will present its

22 evidence. After the state finishes, the defendant

23 may present evidence. If the defendant produces

24 evidence, the state may present additional or

25 rebuttal evidence.

Mina G. Hunt (928) 554-8522

1 With each witness there is a direct

2 examination, a cross-examination by the opposing

3 side and finally a redirect examination. Then

4 members of the jury are given the opportunity to

5 pose questions. This usually ends the testimony of

6 that witness.

7 Third, after all the evidence is in, I

8 will read and give you copies of the final

9 instructions. These final instructions are the

10 rules of law you must follow in reaching your

11 verdict.

12 Fourth, the attorneys will make closing

13 arguments to tell you what they think the evidence

14 shows and how they think you should decide the

15 case. The state has the right to open and close

16 the arguments since the state has the burden of

17 proof. Just as in opening statement, what is said

18 in closing arguments is not evidence.

19 Fifth, you will deliberate in the jury

20 room about the evidence and the rules of law and

21 decide upon a verdict. Once you agree upon a

22 verdict, it will be read in court with you and the

23 parties present.

24 Finally, you will be discharged and

25 released from the restrictions I will read to you

Mina G Hunt (928) 554-8522

1 next.

01 44 25PM 2 Media Coverage. There will be news media

01 44 26PM 3 coverage of the trial. What the news media covers

01 44 31PM 4 is up to them. You must avoid all news media

01 44 35PM 5 coverage during the trial. If you do encounter

01 44 37PM 6 something about this case in the news media during

01 44 38PM 7 the trial, end your exposure to it immediately and

01 44 42PM 8 report it to me as soon as you can.

01 44 44PM 9 There will be cameras in the courtroom

01 44 45PM 10 during the trial. Do not be concerned about them.

01 44 48PM 11 Court rules require that the proceedings be

01 44 51PM 12 photographed or televised in such a way that no

01 44 54PM 13 juror can be recognized.

01 44 55PM 14 I'd like to stop again there at page 5.

01 44 58PM 15 Excuse me. I've already had a note from a juror

01 45 00PM 16 who did exactly what I'm asking that you do. It

01 45 10PM 17 was a note indicating that there had been exposure

01 45 14PM 18 to a headline or something like that. Brief -- you

01 45 17PM 19 know -- line under it.

01 45 19PM 20 And that note was given to me. I was

01 45 23PM 21 able to give it to the parties. There was a

01 45 26PM 22 question, though, on that note. And I want to make

01 45 28PM 23 the answer clear was how trivial or serious must

01 45 30PM 24 the exposure be before we report it. I'm asking

01 45 38PM 25 you to report it at this point every time in

Mina G. Hunt (928) 554-8522

01 45 43PM 1 exactly the fashion that juror did.

01 45 45PM 2 You write a note to me to what happened,

01 45 47PM 3 and then I can deal with it. And the attorneys,

01 45 51PM 4 the parties, know what happened.

01 45 53PM 5 So at this point if there is that

01 45 55PM 6 inadvertent exposure to something in the media, do

01 45 59PM 7 exactly as that juror has done already and let me

01 46 01PM 8 know by a note just as that juror did and indicated

01 46 07PM 9 in the note, terminated the exposure immediately.

01 46 13PM 10 Admonition. I know you've heard this,

01 46 15PM 11 but I'm going to emphasize it again this afternoon.

01 46 22PM 12 I am now going to say a few words about

13 your conduct as jurors. I am going to give you

14 some do's and don'ts, mostly don'ts, which I will

15 call "the admonition."

16 Do wear your juror badge at all times in

17 and around the courthouse so everyone will know you

18 are on a jury.

19 Each of you has gained knowledge and

20 information from the experiences you have had prior

21 to this trial. Once this trial has begun, you are

22 to determine the facts of this case only from the

23 evidence that is presented in this courtroom.

24 Arizona law prohibits a juror from

25 receiving evidence not properly admitted at trial.

Mina G Hunt (928) 554-8522

1 Therefore, do not do any research or make any
2 investigation about the case on your own. Do not
3 view or visit the locations where the events of the
4 case took place. Do not consult any source such as
5 a newspaper, a dictionary, a reference manual,
6 television, radio or the Internet for information.

7 If you have a question or need additional
8 information, submit your request in writing, and I
9 will discuss it with the attorneys.

10 One reason for these prohibitions is
11 because the trial process works by each side
12 knowing exactly what evidence is being considered
13 by you and what law you are applying to the facts
14 you find.

15 As I previously told you, the only
16 evidence you are to consider in this matter is that
17 which is introduced in the courtroom. The law that
18 you are to apply is the law that I give you in the
19 final instructions. This prohibits you from
20 consulting any outside source.

21 Do not talk to anyone about the case or
22 about anyone who has anything to do with it, and do
23 not let anyone talk to you about those matters
24 until the trial has ended and you have been
25 discharged as jurors. Until then, you may tell

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1 people you are on a jury and you may tell them the
2 estimated schedule for the trial. But do not tell
3 them anything else except to say that you cannot
4 talk about the trial until it is over.

5 It is your duty not to speak with or
6 permit yourselves to be addressed by any person on
7 any subject connected with the trial. If someone
8 should try to talk to you about the case, stop him
9 or her or walk away. If you should overhear others
10 talking about the case, stop him or her or walk
11 away. If you should overhear others talking about
12 the case, stop them or walk away.

13 If anything like this does happen, report
14 it to me or any member of my staff as soon as you
15 can. To avoid even the appearance of improper
16 conduct, do not talk to any of the parties, the
17 lawyers, the witnesses or media representatives
18 about anything until the case is over even if your
19 conversation with them has nothing to do with the
20 case.

21 For example, you might pass an attorney
22 in the hall and ask what good restaurants there are
23 downtown. And somebody from a distance may think
24 you are talking about the case. So, again, please
25 avoid even the appearance of improper conduct.

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1 The lawyers and parties have been given
2 the same instruction about not speaking with you
3 jurors, so do not think they are being unfriendly
4 to you. When you go home tonight and family and
5 friends ask what the case is about, remember you
6 cannot speak with them about the case. All you can
7 tell them is that you are on a jury, the estimated
8 schedule for the trial and that you cannot talk
9 about the case until it is over.

10 In a civil case the jurors are permitted
11 to discuss the evidence during the trial while the
12 trial progresses. In a criminal case, such as
13 this, however, the jurors are not permitted to
14 discuss the evidence until all the evidence has
15 been presented and the jurors have retired to
16 deliberate on the verdict. You therefore may not
17 discuss the evidence among yourselves until you
18 retire to deliberate on your verdict.

19 Do not form final opinions about any fact
20 or about the outcome of the case until you have
21 heard and considered all of the evidence, the
22 closing arguments and the rest of the instructions
23 I will give you on the law. Keep an open mind
24 during the trial. Form your final opinions only
25 after you have had an opportunity to discuss the

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1 case with each other in the jury room at the end of
2 the trial.

3 Before each recess I will not repeat the
4 entire admonition I have just given you. I will
5 probably refer to it by saying, please remember the
6 admonition, or something like that. However, even
7 if I forget to make any reference to it, remember
8 that the admonition still applies at all times
9 during the trial.

10 Bench Conferences and Recesses. From
11 time to time during the trial, it may become
12 necessary for me to talk to the attorneys out of
13 the hearing of the jury either by having a
14 conference at the bench when the jury is present in
15 the courtroom or by calling a recess.

16 Please understand that while you are
17 waiting, we are working. The purpose of these
18 conferences is not to keep relevant information
19 from you but to decide how certain evidence is to
20 be treated under rules of evidence and to avoid
21 confusion and error.

22 We will, of course, do what we can to
23 keep the number and length of these conferences to
24 a minimum. I may not always grant an attorney's
25 request for a conference. Do not consider my

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1 granting or denying a request for a conference as
2 any indication of my opinion of the case or of what
3 your verdict should be.

4 Please do not be concerned what we are
5 discussing at any bench conference we may have.
6 Please respect the privacy of those participating
7 in the bench conference in order to maintain the
8 fairness of the trial.

01 51 48PM 9 As I've said, if we can stop there just a
01 51 50PM 10 minute. If we're having a bench conference, ladies
01 51 53PM 11 and gentlemen, I want you to feel free to stand and
01 51 55PM 12 stretch and move around a bit.

01 51 57PM 13 Questions. If at any time during the
01 51 59PM 14 trial you have difficulty hearing or seeing
01 52 01PM 15 something that you should be hearing or seeing, or
01 52 03PM 16 if you get into personal distress for any reason,
01 52 05PM 17 raise your hand and let me know.

01 52 08PM 18 If you have any questions about parking,
01 52 11PM 19 restaurants or other personal matters relating to
01 52 13PM 20 your jury service, feel free to ask one of the
01 52 16PM 21 court staff. But remember that the admonition
01 52 18PM 22 applies to court staff as it does to everybody
01 52 22PM 23 else. So do not try to discuss the case with court
01 52 24PM 24 staff.

01 52 25PM 25 Lawyers' Comments are not Evidence. In
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01 52 27PM 1 their opening statements and closing arguments, the
01 52 30PM 2 lawyers will talk to you about the law and the
01 52 32PM 3 evidence. What the lawyers say is not evidence,
01 52 35PM 4 but it may help you to understand the law and the
01 52 38PM 5 evidence.

01 52 38PM 6 Stipulations. The lawyers are permitted
01 52 41PM 7 to stipulate that certain facts exist. This means
01 52 44PM 8 that both sides agree those facts do exist and are
01 52 48PM 9 part of the evidence.

01 52 59PM 10 Evidence to be Considered. You are to
11 determine what the facts in the case are from the
12 evidence produced in court. If the Court sustained
13 an objection to a lawyer's questions, you must
14 disregard it and any answer given. Any testimony
15 stricken from the court record must not be
16 considered.

17 Evidence, Statements of Lawyers and
18 Rulings. As I mentioned earlier, it is your job to
19 decide from the evidence presented in court what
20 the facts are. Here are six rules on what is and
21 what is not evidence:

22 Evidence to be Considered. You are to
23 determine the facts only from the testimony of
24 witnesses and from exhibits admitted in evidence.

25 Lawyers' Statements. Ordinarily
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1 statements or arguments made by the lawyers are not
2 evidence. Their purpose is to help you understand
3 the evidence and law. However, if the lawyers for
4 all parties agree or stipulate some particular fact
5 is true, you should accept it as the truth.

6 Questions to a Witness. By itself a
7 question is not evidence. A question can only be
8 used to give meaning to a witness's answer.

9 Objections to questions. If a lawyer
10 objects to a question and I do not allow the
11 witness to answer, you must not try to guess what
12 the answer might have been. You must also not try
13 to guess the reason why the lawyer objected in the
14 first place. Admission of evidence in court is
15 governed by rules of law. I will apply those rules
16 and resolve any issues that arise during the trial
17 concerning the admission of evidence.

18 Rejected Evidence. At times during the
19 trial, testimony or exhibits will be offered into
20 evidence, but I might not allow them to become
21 evidence. Since they never become evidence, you
22 must not consider them.

23 Stricken Evidence. At times I may order
24 some evidence to be stricken from the record. Then
25 it is no longer evidence, and you must not consider

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1 it for any purpose.

2 Direct and Circumstantial Evidence.
3 Evidence may be direct or circumstantial. Direct
4 evidence is the testimony of a witness who saw,
5 heard or otherwise sensed an event. Circumstantial
6 evidence is the proof of a fact or facts from which
7 you may find another fact.

8 The law makes no distinction between
9 direct and circumstantial evidence. It is for you
10 to determine the importance to be given to the
11 evidence regardless of whether it is direct or
12 circumstantial.

01 55 17PM 13 Exclusion of Witnesses. The rule of
01 55 19PM 14 exclusion of witnesses is in effect and will be
01 55 21PM 15 observed by all witnesses until the trial is over
01 55 23PM 16 and a result announced. This means all witnesses
01 55 25PM 17 will remain outside the courtroom during the entire
01 55 28PM 18 trial except when called to the witness stand.
01 55 32PM 19 Each witness will wait in an area directed by the
01 55 35PM 20 bailiff unless other arrangements have been made
01 55 38PM 21 with the attorney who has called the witness.

01 55 41PM 22 The rule also forbids witnesses from
01 55 44PM 23 telling anyone but the lawyers what they will
01 55 46PM 24 testify about, what they had testified to. If
01 55 49PM 25 witnesses do talk to the lawyers about their

Mina G Hunt (928) 554-8522

01 55 51PM 1 testimony, other witnesses and jurors should avoid
01 55 54PM 2 being present or overhearing.

01 55 57PM 3 The lawyers are directed to inform all
01 56 00PM 4 their witnesses of this rule and to remind them of
01 56 03PM 5 their obligations from time to time as may be
01 56 05PM 6 necessary.

01 56 08PM 7 The parties and their lawyers should keep
01 56 09PM 8 a careful lookout to prevent any potential witness
01 56 12PM 9 from remaining in the courtroom if they
01 56 15PM 10 inadvertently enter.

01 56 17PM 11 And if we could stop there just a minute.
01 56 19PM 12 Ladies and gentlemen, there are some exceptions to
01 56 21PM 13 this rule. So if it happens to be you see somebody
01 56 23PM 14 in court and the person may be a witness, and I
01 56 27PM 15 don't know that that's a situation, I just want to
01 56 29PM 16 let you know that there are some exceptions and not
01 56 32PM 17 to be upset if you see something like that.

01 56 35PM 18 Credibility of Witnesses. Resuming there
01 56 40PM 19 at the middle of page 9. In deciding the facts of
01 56 41PM 20 this case, you should consider what testimony to
01 56 46PM 21 accept and what to reject. You may accept
01 56 48PM 22 everything a witness says, or part of it or none of
01 56 52PM 23 it.

01 56 53PM 24 In evaluating testimony, you should use
01 56 54PM 25 the tests for truthfulness that people use in

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01 56 57PM 1 determining matters of importance in everyday life,
01 57 01PM 2 including such factor as the witness's ability to
01 57 03PM 3 see or hear or know the things the witness
01 57 05PM 4 testified to; the quality of the witness's memory,
01 57 08PM 5 the witness's manner while testifying; whether the
01 57 10PM 6 witness had any motive, bias or prejudice; whether
01 57 14PM 7 the witness was contradicted by anything the
01 57 17PM 8 witness said or wrote before trial or by other
01 57 20PM 9 evidence and the reasonableness of the witness's
01 57 22PM 10 testimony when considered in the light of the other
01 57 24PM 11 evidence. Consider all of the evidence in the
01 57 25PM 12 light of reason, common sense and experience.

01 57 31PM 13 Expert Witness. A witness qualified as
01 57 34PM 14 an expert by education or experience may state
01 57 37PM 15 opinions on matters in that witness's field of
01 57 40PM 16 expertise and may also state reasons for those
01 57 43PM 17 opinions.

01 57 43PM 18 Expert opinion testimony should be judged
01 57 45PM 19 just as any other testimony. You are be bound by
01 57 47PM 20 it. You may accept it or reject it in whole or in
01 57 51PM 21 part. And you should give it as much credibility
01 57 56PM 22 and weight as you think it deserves considering the
01 57 58PM 23 witness's qualifications and experience, the
01 58 02PM 24 reasons given for the opinions, and all the other
01 58 02PM 25 evidence in the case.

Mina G. Hunt (928) 554-8522

01 58 03PM 1 testimony of Law Enforcement Officers.

01 58 05PM 2 The testimony of a law enforcement officer is not
01 58 07PM 3 entitled to any greater or lesser importance or
01 58 11PM 4 believability merely because of the fact that the
01 58 14PM 5 witness is a law enforcement officer.

01 58 16PM 6 You are to consider the testimony of a
01 58 18PM 7 peace officer just as you would the testimony of
01 58 21PM 8 any other witness.

01 58 22PM 9 Indictment is not Evidence. The state
01 58 24PM 10 has charged Mr. Ray with three counts of
01 58 27PM 11 manslaughter. These charge are not evidence
01 58 29PM 12 against the defendant. You must not think the
01 58 31PM 13 defendant is guilty just because of these charges.
01 58 34PM 14 Mr. Ray has plead not guilty. The plea of not
01 58 36PM 15 guilty means that the state must prove each element
01 58 41PM 16 of the charges beyond a reasonable doubt.

01 58 42PM 17 Presumption of Innocence, Reasonable
01 58 45PM 18 Doubt. The law does not require a defendant to
01 58 47PM 19 prove innocence. Every defendant is presumed by
01 58 50PM 20 law to be innocent. You must start with the
01 58 52PM 21 presumption that the defendant is innocent.

01 58 54PM 22 The state has the burden of proving
01 58 56PM 23 Mr. Ray guilty beyond a reasonable doubt. This
01 58 58PM 24 means the state must prove each element of each
01 59 02PM 25 charge beyond a reasonable doubt.

Mina G. Hunt (928) 554-8522

01 59 03PM 1 In civil cases it is only necessary to
01 59 05PM 2 prove that a fact is more likely true than not true
01 59 08PM 3 or that its truth is highly probable. In a
01 59 12PM 4 criminal case such as this, the state's proof must
01 59 15PM 5 be more powerful than that. It must be beyond a
01 59 22PM 6 reasonable doubt.

01 59 22PM 7 Proof beyond a reasonable doubt is proof
01 59 25PM 8 that leaves you firmly convinced of Mr. Ray's
01 59 28PM 9 guilt. There are very few things in this world
01 59 31PM 10 that we know with absolute certainty. And in
01 59 33PM 11 criminal cases the law does not require proof that
01 59 36PM 12 overcomes every doubt.

01 59 37PM 13 If, based on your consideration of the
01 59 38PM 14 evidence, you are firmly convinced that Mr. Ray is
01 59 41PM 15 guilty of the crimes charged, you must find him
01 59 44PM 16 guilty.

01 59 44PM 17 If, on the other hand, you think there is
01 59 46PM 18 a real possibility that Mr. Ray is not guilty, you
01 59 49PM 19 must give him the benefit of the doubt and find him
01 59 52PM 20 not guilty.

01 59 53PM 21 Evidence of any Kind. The state must
01 59 55PM 22 prove guilt beyond a reasonable doubt based on the
01 59 58PM 23 evidence. Mr. Ray is not required to produce
02 00 00PM 24 evidence of any kind. The decision on whether to
02 00 03PM 25 produce any evidence is left to the defendant

Mina G. Hunt (928) 554-8522

02 00 05PM 1 acting with the advice of an attorney. The
02 00 07PM 2 defendants's decision in this regard is not
02 00 10PM 3 evidence of guilt.

02 00 18PM 4 Constitutional Right not to Testify. The
02 00 21PM 5 state must prove guilt beyond a reasonable doubt
02 00 24PM 6 based on the evidence. A defendant in a criminal
02 00 27PM 7 case has a constitutional right to not testify at
02 00 29PM 8 trial. And the exercise of that right cannot be
02 00 31PM 9 considered by the jury in determining whether a
02 00 34PM 10 defendant is guilty or not guilty.

02 00 36PM 11 Jury not to Consider Penalty. You must
02 00 39PM 12 not decide -- you must decide whether Mr. Ray is
02 00 41PM 13 guilty or not guilty by determining what the facts
02 00 44PM 14 in the case are and applying the final jury
02 00 46PM 15 instructions. You must not consider the possible
02 00 49PM 16 punishment when deciding on guilt. Punishment is
02 00 51PM 17 left to the Judge.

02 00 54PM 18 Separate Counts. Each count charges a
02 00 56PM 19 separate and distinct offense. You must decide
02 00 59PM 20 each count separately based on the evidence and the
02 01 01PM 21 law applicable to it uninfluenced by your decision
02 01 03PM 22 on any other count.

02 01 05PM 23 You may find that the state has proved
02 01 08PM 24 beyond a reasonable doubt all, some or none of the
02 01 10PM 25 charged offenses. Your finding for each count must
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02 01 11PM 1 be stated in a separate verdict.

02 01 14PM 2 Manslaughter. The State of Arizona has
02 01 17PM 3 charged Mr. Ray with three counts of manslaughter.
02 01 20PM 4 The crime of manslaughter requires proof that the
02 01 22PM 5 defendant:

02 01 25PM 6 1. Caused the death of another person;
02 01 27PM 7 and

02 01 29PM 8 2. Was aware of and showed a conscious
02 01 31PM 9 disregard of a substantial and unjustifiable risk
02 01 34PM 10 of death.

02 01 36PM 11 The risk must be such that disregarding
02 01 39PM 12 it was a gross deviation from the standard of
02 01 41PM 13 conduct that a reasonable person would observe in
02 01 44PM 14 the situation.

02 01 46PM 15 Conclusion to Preliminary Instructions:
02 01 49PM 16 The rules of law I have shared with you in the past
02 01 51PM 17 few minutes are preliminary only. At the end of
02 01 54PM 18 the case I will read to you and give you a copy of
02 01 56PM 19 the final instructions of law. In deciding the --
02 01 59PM 20 in deciding the case you must be guided by the
02 02 01PM 21 final instructions.

02 02 04PM 22 At this time the lawyers will be
02 02 06PM 23 permitted to make their opening statements. Again,
02 02 09PM 24 what the lawyers say in their opening statements is
02 02 11PM 25 not evidence. It is simply an outline of what the

Mina G. Hunt (928) 554-8522

02 02 17PM 1 lawyer thinks the evidence will be and is offered
02 02 19PM 2 to help you understand and follow the evidence
02 02 21PM 3 during the trial.

02 02 24PM 4 Ms. Polk, do you wish to make an opening
02 02 27PM 5 statement.

02 02 27PM 6 MS. POLK: Thank you, Your Honor.

02 02 29PM 7 If it please the Court, Counsel, and
02 02 32PM 8 ladies and gentlemen of the jury, my name is Sheila
02 02 34PM 9 Polk. I'm the Yavapai County Attorney. I
02 02 37PM 10 represent the State of Arizona along with Deputy
02 02 39PM 11 County Attorney Bill Hughes, whom you've already
02 02 42PM 12 met. Also at our table is Detective Ross Diskin
02 02 44PM 13 from the Yavapai County Sheriff's Office, who is
02 02 47PM 14 the detective on this case.

02 02 49PM 15 On October 8th of 2009, three vibrant,
02 02 52PM 16 healthy adults -- Kirby Brown, James Shore and Liz
02 02 54PM 17 Neuman -- entered a sweat lodge at a retreat center
02 02 57PM 18 in Sedona. Kirby was 38. James was 40, and Liz
02 02 59PM 19 Neuman was just 49 years old.

02 03 01PM 20 Each one was seeking to learn from James
02 03 04PM 21 Ray, the defendant in this case, personal growth
02 03 06PM 22 and the tools to success in their lives. Each one
02 03 09PM 23 was eager to gain knowledge, and each was looking
02 03 11PM 24 for wisdom and personal insight.

02 03 13PM 25 Instead of growth and enlightenment
Mina G Hunt (928) 554-8522

02 04 00PM 1 Kirby, James, and Liz found death, found death in
02 04 03PM 2 Mr. Ray's sweat lodge.

02 04 05PM 3 The man who promised Kirby, James, and
02 04 08PM 4 Liz enlightenment and success if they followed him
02 04 10PM 5 and endured an intense and searing heat condition
02 04 13PM 6 in his sweat lodge is James Ray, seated over at
02 04 15PM 7 defense table.

02 04 18PM 8 This sweat lodge ceremony, this heat
02 04 20PM 9 endurance challenge, was the grand finale of a
02 04 23PM 10 weeklong seminar. Fifty-six people followed James
02 04 25PM 11 Ray into that tent on October 8th to participate in
02 04 28PM 12 his heat endurance challenge.

02 04 30PM 13 By the time Mr. Ray ended this heat
02 04 33PM 14 challenge, two to two and a half hours later, about
02 04 35PM 15 20 people were down and several unconscious.

02 04 38PM 16 (Audio recording played.)

02 04 40PM 17 MS. POLK: According to the medical examiner,
02 04 43PM 18 who will testify in this case, Kirby Jones died of
02 04 45PM 19 heat stroke; James Shore died of heat stroke, and
02 04 48PM 20 Liz Neuman died ten days later with her family at
02 04 50PM 21 her side after being taken off of life support.

02 04 53PM 22 The medical examiner will testify that
02 04 55PM 23 Liz Neuman died of multisystem organ failure due to
02 04 58PM 24 hyperthermia, which is the overheating of the body
02 05 00PM 25 due to prolonged sweat lodge exposure.

Mina G Hunt (928) 554-8522

02:09:46PM 1 Kirby Brown and James Shore, along with
02:09:48PM 2 most of the participants, had paid considerable
02:09:52PM 3 sums of money to Mr. Ray, the defendant, to enroll
02:09:54PM 4 in his seminar called "Spiritual Warrior 2009."

02:09:56PM 5 Liz Neuman had participated in the past
02:10:04PM 6 in many of Mr. Ray's seminars and was at the event
02:10:10PM 7 in October as a volunteer staff member.

02:10:12PM 8 In this case you will hear from many
02:10:15PM 9 witnesses who also enrolled in Mr. Ray's Spiritual
02:10:21PM 10 Warrior 2009 seminar. Most participants paid close
02:10:24PM 11 to \$10,000 to the defendant plus another \$1,600 for
02:10:30PM 12 room and board at the retreat center.

02:10:33PM 13 The seminar ran from Saturday evening,
02:10:34PM 14 October 3rd, to Friday morning, October 9th. It
02:10:37PM 15 was held at a location called the "Angel Valley
02:10:39PM 16 Retreat Center," about 25 miles from this
02:10:42PM 17 courthouse, down along Oak Creek.

02:10:48PM 18 The defendant, James Ray, promised that
02:10:49PM 19 his Spiritual Warrior seminar would ensure his
02:10:53PM 20 participants the five pillars of success:
02:10:56PM 21 financial, relationships, mental, spiritual, and
02:11:03PM 22 physical.

02:11:04PM 23 The theme for the Spiritual Warrior 2009
02:11:08PM 24 seminar was to act like warriors and act with honor
02:11:11PM 25 at all times. And Mr. Ray, through his staff,

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02:11:15PM 1 recorded all of his sessions with his participants
02:11:19PM 2 during this seminar.

02:11:22PM 3 (Audio recording played.)

02:14:01PM 4 MS. POLK: Mr. Ray promised his participants
02:14:04PM 5 that he would facilitate their enlightenment
02:14:08PM 6 through the activities of the week.

02:11:22PM 7 (Audio recording played.)

02:15:55PM 8 MS. POLK: Mr. Ray told the participants that
02:15:58PM 9 the week would be difficult and challenging and
02:16:00PM 10 told them that they would have many altered state
02:16:04PM 11 experiences before the week ended.

02:11:22PM 12 (Audio recording played.)

02:16:56PM 13 MS. POLK: From the very first day of the
02:16:59PM 14 seminar, Mr. Ray told the group that what he called
02:17:03PM 15 "threshold experiences" would be uncomfortable but
02:17:05PM 16 were necessary to grow in capacity.

02:11:22PM 17 (Audio recording played.)

02:17:38PM 18 MS. POLK: The events of the week were a
02:17:41PM 19 surprise for most of the group. When they signed
02:17:44PM 20 up, most participants did not know what to expect.

02:17:47PM 21 Participants arrived at Angel Valley on
02:17:53PM 22 Saturday afternoon for registration. The
02:17:57PM 23 defendant, Mr. Ray, welcomed them around 6:00 p.m.

02:17:57PM 24 Mr. Ray encouraged everyone to
02:17:59PM 25 participate in the events of the week 100 percent

Mina G. Hunt (928) 554-8522

02:18:03PM 1 in order to get the full value of their investment.

02:18:08PM 2 The defendant called this "playing full-on" and
02:18:10PM 3 promised the group they would leave different
02:18:14PM 4 people.

02:11:22PM 5 (Audio recording played.)

02:18:39PM 6 MS. POLK: At this trial you will hear from
02:18:41PM 7 witnesses that throughout the week those who showed
02:18:43PM 8 a reluctance to participate in certain activities
02:18:48PM 9 were reminded time and again by Mr. Ray to play
02:18:50PM 10 full-on.

02:18:51PM 11 Many witnesses in this trial will testify
02:18:54PM 12 that by the end of the week when they entered
02:18:57PM 13 Mr. Ray's sweat lodge for the grand finale event,
02:19:02PM 14 his heat endurance challenge, they were exhausted,
02:19:05PM 15 mentally weak, and fully conditioned to follow
02:19:08PM 16 Mr. Ray's instructions.

02:19:10PM 17 One of the first events the participants
02:19:13PM 18 faced shortly after arriving at Angel Valley was to
02:19:17PM 19 shave their heads -- men and women alike. Mr. Ray
02:19:20PM 20 told them that the act of shaving their head was
02:19:23PM 21 symbolic of playing full-on. And many witnesses at
02:19:26PM 22 this trial will tell you that they shaved their
02:19:28PM 23 heads, demonstrating to Mr. Ray and to themselves
02:19:33PM 24 their intention to enter into the activities of the
02:19:38PM 25 week 100 percent and to play full-on.

Mina G. Hunt (928) 554-8522

02:19:41PM 1 Day one, Sunday, started with yoga at
02:19:45PM 2 6:30 in the morning, consisted of lectures, film
02:19:48PM 3 clips from a movie called The Last Samurai,
02:19:52PM 4 discussions, writing assignments that Mr. Ray
02:19:55PM 5 called "recapitulations," and statements by
02:19:59PM 6 participants about their commitment.

02:20:02PM 7 James Shore, who lost his life in
02:20:06PM 8 Mr. Ray's sweat lodge, was one of the participants
02:20:10PM 9 who spoke that day at the mic about his intentions
02:20:12PM 10 for the week.

02:20:14PM 11 On day two, Monday, participants again
02:20:17PM 12 woke up early, even though many had stayed up
02:20:20PM 13 almost all night long writing in their journals at
02:20:23PM 14 Mr. Ray's urging. This day included more movie
02:20:28PM 15 clips from The Last Samurai, more lectures from
02:20:31PM 16 Mr. Ray, more writing, and an activity that
02:20:34PM 17 involved hyperventilating in order to achieve what
02:20:38PM 18 Mr. Ray called "an altered state."

02:11:22PM 19 (Audio recording played.)

02:26:08PM 20 MS. POLK: And during this trial a participant
02:26:11PM 21 named Dennis Mehavrer will testify. During his
02:26:16PM 22 testimony you will hear the question he posed to
02:26:18PM 23 Mr. Ray about how uncomfortable that breath work
02:26:22PM 24 that was just described for you was for Dennis.

02:26:28PM 25 And you will hear Mr. Ray's response

Mina G Hunt (928) 554-8522

02 26 28PM 1 where he tells the group that the events of the
02 26 30PM 2 week are an accelerated learning program and that
02 26 34PM 3 the participants have to be willing to push the
02 26 38PM 4 threshold and willing to be uncomfortable in doing
02 26 42PM 5 so.

02 26 46PM 6 Mr. Ray also reassures the group that the
02 26 48PM 7 threshold activities that he is leading them in
02 26 50PM 8 throughout the week are being held in a controlled
02 26 52PM 9 environment.

02 11 22PM 10 (Audio recording played.)

02 28 19PM 11 MS. POLK: Tuesday, day three, of the
02 28 21PM 12 Spiritual Warrior seminar, was another day of
02 28 24PM 13 lectures and activity. Around noon Mr. Ray imposed
02 28 26PM 14 what he called a "code of silence." The code of
02 28 32PM 15 silence meant that participants could not speak to
02 28 35PM 16 anyone at any time for any reason. Mr. Ray imposed
02 28 40PM 17 this code of silence on his 49 participants from
02 28 44PM 18 Tuesday afternoon until 9:00 a.m. on Thursday
02 28 48PM 19 morning.

02 28 49PM 20 On Tuesday around 5:00 p.m. in the
02 28 52PM 21 Crystal Hall, the defendant, Mr. Ray, led the group
02 28 55PM 22 in an activity he called "the Samurai Game." In
02 28 59PM 23 this activity Mr. Ray played the role of God.
02 29 04PM 24 Forty-nine participants were divided into two
02 29 07PM 25 teams. When a participant violated any rule of the
Mina G Hunt (928) 554-8522

02 29 11PM 1 game, Mr. Ray, as God, would pronounce them dead.
02 11 22PM 2 (Audio recording played.)

02 29 48PM 3 MS. POLK: That dead participant then had to
02 29 51PM 4 lay down on the cement floor and not move, not move
02 29 55PM 5 a muscle, not relieve an itch, not find a more
02 30 00PM 6 comfortable position, not cough, and not get up for
02 30 04PM 7 any reason, not even to use the restroom.

02 11 22PM 8 (Audio recording played.)

02 30 59PM 9 MS. POLK: Kirby Brown was one of the first
02 31 02PM 10 participants to be pronounced by James Ray after
02 31 06PM 11 talking as dead. The Samurai Game broke for
02 31 12PM 12 dinner, and those who were still alive were allowed
02 31 16PM 13 to eat dinner. The code of silence, however, was
02 31 18PM 14 not lifted, and participants had dinner in silence.

02 31 21PM 15 Those who had already been pronounced
02 31 23PM 16 dead by Mr. Ray did not get dinner. They remained
02 31 26PM 17 dead, lying in the same spot where they fell. At
02 31 30PM 18 some point staff called "angels of death" did bring
02 31 34PM 19 them blankets to help ward off the chill of the
02 31 38PM 20 evening.

02 31 38PM 21 Kirby was one of those who did not get
02 31 45PM 22 dinner and continued to lie on the floor in great
02 31 50PM 23 discomfort, as you will learn in this trial.

02 31 50PM 24 After dinner the Samurai Game continued.
02 31 52PM 25 Once a player was declared dead, he or she could
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02 31 57PM 1 not move. If he or she moved, this was considered
02 32 04PM 2 dishonorable, causing another team member to die.
02 32 04PM 3 Witnesses will testify at trial how this
02 32 09PM 4 Samurai Game reinforced their need to obey Mr. Ray
02 32 12PM 5 and emphasized how their conduct would impact
02 32 18PM 6 others at the Spiritual Warrior seminar. And keep
02 32 20PM 7 that testimony in mind as you hear testimony about
02 32 21PM 8 group behavior inside the sweat lodge event later
02 32 24PM 9 in the week.

02 32 24PM 10 The Samurai Game ended, not until about
02 32 27PM 11 11:00 p.m., with Mr. Ray declaring that everyone
02 32 30PM 12 was dead. Kirby was finally allowed to get up from
02 32 34PM 13 the ground but still under the code of silence, as
02 32 38PM 14 was everyone.

02 32 40PM 15 Participants were then lead directly into
02 32 42PM 16 their next challenge, the Vision Quest, another
02 32 47PM 17 threshold experience. They were given a few
02 32 50PM 18 minutes to gather a sleeping bag, their writing
02 32 53PM 19 tools and journals; and then, in the dark, each
02 32 56PM 20 participant was led to a location in the desert
02 33 00PM 21 around Oak Creek and left there alone for the next
02 33 03PM 22 36 hours.

02 11 22PM 23 (Audio recording played.)

02 34 09PM 24 MS. POLK: Each participant was instructed to
02 34 11PM 25 draw a small circle called their "medicine wheel."
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02 34 15PM 1 They were told to stay inside this medicine --
02 34 18PM 2 inside this circle, this medicine wheel, for the
02 34 22PM 3 entire 36 hours, even to relieve themselves or
02 34 25PM 4 while defecating.

02 34 27PM 5 During these 36 hours that began on
02 34 29PM 6 Tuesday at 11:00 p.m. and did not end until
02 34 32PM 7 Thursday morning at about 6:30 a.m., participants
02 34 36PM 8 were not allowed any food, any water, and not
02 34 41PM 9 allowed to move, to leave that small circle.

02 34 45PM 10 Less than eight hours later, after coming
02 34 48PM 11 off of that Vision Quest, participants were then
02 34 52PM 12 led into the defendant's sweat lodge ceremony.

02 34 55PM 13 When you hear testimony from witnesses
02 34 57PM 14 about their intentions to stay inside the sweat
02 35 00PM 15 lodge in spite of the extreme heat, keep in mind
02 35 04PM 16 how the Vision Quest activity and the requirement
02 35 07PM 17 that they stay inside their small circles for 36
02 35 11PM 18 hours conditioned them to stay inside yet another
02 35 15PM 19 small enclosed space, the sweat lodge, and affected
02 35 20PM 20 their mindset.

02 35 21PM 21 The code of silence was still in place.
02 35 25PM 22 The Vision Quest was a complete fast -- no water,
02 35 29PM 23 no food -- from Tuesday at 11:00 p.m. until
02 35 33PM 24 Thursday morning. And for those who had missed
02 35 37PM 25 dinner on Tuesday, such as Kirby, the fast was even
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02 35 41PM 1 longer.

02 35 42PM 2 When asked by a participant whether they

02 35 45PM 3 should sleep during the Vision Quest, this is what

02 35 48PM 4 Mr. Ray tells them:

02 35 51PM 5 (Audio recording played.)

02 36 13PM 6 MS. POLK: Participants were told to approach

02 36 15PM 7 this activity, the Vision Quest, with

02 36 19PM 8 impeccability. And Mr. Ray reminded them that he

02 36 22PM 9 had told them when they signed up not to come to

02 36 25PM 10 Spiritual Warrior if they were not willing to do

02 36 27PM 11 this work.

02 36 28PM 12 (Audio recording played.)

02 36 11PM 13 MS. POLK: Participants stayed in their small

02 36 14PM 14 circles in the desert in silence without food or

02 36 17PM 15 water for 36 hours -- Tuesday night, all day

02 36 21PM 16 Wednesday, Wednesday night until Thursday morning.

02 36 24PM 17 On day five, Thursday, around 6:30 a.m.,

02 36 28PM 18 each participant was picked up from their spot from

02 36 32PM 19 their Vision Quest and walked back to the retreat

02 36 35PM 20 center and allowed to take a shower but still in

02 36 38PM 21 silence.

02 36 39PM 22 Their fast from food and water for the

02 36 42PM 23 last 36 hours came to an end. They gathered for

02 36 45PM 24 breakfast but were told to eat light. Then they

02 36 49PM 25 gathered in the Crystal Hall and the code of

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02 36 53PM 1 silence was lifted. Still unaware of what the next

02 36 56PM 2 activity was, participants were reminded to

02 36 59PM 3 hydrate.

02 36 00PM 4 I have told you that three people died in

02 36 02PM 5 Mr. Ray's ultimate event of the week, a heat

02 36 08PM 6 endurance challenge that took place in the sweat

02 36 10PM 7 lodge. Two of the deceased were participants in

02 36 14PM 8 the Spiritual Warrior seminar -- Kirby and James.

02 36 16PM 9 The third victim, Liz Neuman, was a member of

02 36 20PM 10 Mr. Ray's Dream Team, volunteers who had

02 36 23PM 11 participated in past events sold by Mr. Ray.

02 36 27PM 12 In fact, you will learn during this trial

02 36 29PM 13 that Liz Neuman had attended many other events held

02 36 33PM 14 by Mr. Ray and had participated in prior sweat

02 36 36PM 15 lodge ceremonies conducted by Mr. Ray on other

02 36 39PM 16 occasions.

02 36 40PM 17 At this Spiritual Warrior 2009 event,

02 36 44PM 18 there were seven volunteers who made up Mr. Ray's

02 36 48PM 19 Dream Team, and they were introduced to the

02 36 51PM 20 participants by Mr. Ray on Sunday, day one.

02 11 22PM 21 (Audio recording played.)

02 45 44PM 22 MS. POLK: You will hear testimony in this

02 45 46PM 23 case about the goals of the Dream Team members.

02 45 50PM 24 While participants did that Vision Quest activity

02 45 50PM 25 in the desert from Tuesday night until Thursday

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02 45 53PM 1 morning, the Dream Team members had other

02 45 56PM 2 responsibilities.

02 45 57PM 3 Two of the Dream Team members will

02 45 59PM 4 testify in this case. Both of them will tell you

02 46 02PM 5 about an incident that happened on Wednesday

02 46 04PM 6 evening at the retreat center while the

02 46 07PM 7 participants were on the Vision Quest.

02 46 09PM 8 The Dream Team members had gathered in

02 46 12PM 9 the dining hall to share some wine and unwind and

02 46 16PM 10 talk. Mr. Ray twice walked in on their gathering

02 46 21PM 11 very upset with them and chastised them for

02 46 23PM 12 drinking wine and not holding space, in his words,

02 46 28PM 13 for the participants out on their Vision Quests.

02 46 31PM 14 You will hear testimony that Liz Neuman

02 46 34PM 15 was very upset with herself, unhappy that she had

02 46 37PM 16 made James Ray unhappy. Keep that information in

02 46 41PM 17 mind when you hear testimony from witnesses about

02 46 45PM 18 Liz Neuman during Mr. Ray's sweat lodge ceremony.

02 46 48PM 19 When you hear about Liz's suffering

02 46 51PM 20 inside the sweat lodge -- when you hear from

02 46 54PM 21 witnesses -- when you hear testimony from witnesses

02 46 57PM 22 about their attempts to alleviate Liz's suffering,

02 47 02PM 23 I ask that you remember the testimony about Liz's

02 47 06PM 24 unhappiness with herself for breaking Mr. Ray's

02 47 10PM 25 rules on Wednesday night at the wine drinking

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02 47 13PM 1 gathering.

02 47 15PM 2 Now back to day five of the Spiritual

02 47 20PM 3 Warrior 2009 seminar. After participants came in

02 47 24PM 4 from their Vision Quest on Thursday morning and had

02 47 27PM 5 a light breakfast, the code of silence was lifted.

02 47 30PM 6 There was no lunch that day. Mr. Ray showed his

02 47 33PM 7 participants another clip from The Last Samurai and

02 47 37PM 8 briefed them on the last event, the grand finale,

02 47 42PM 9 the event that was supposed to convince them that

02 47 45PM 10 their money was well spent, the ultimate heat

02 47 49PM 11 endurance challenge, Mr. Ray's sweat lodge

02 47 55PM 12 ceremony.

02 47 55PM 13 About 30 minutes before participants

02 47 57PM 14 entered this sweat lodge, participants learned for

02 48 01PM 15 the first time about this activity.

02 11 22PM 16 (Audio recording played.)

02 50 14PM 17 MS. POLK: In briefing his participants about

02 50 16PM 18 this heat endurance challenge, Mr. Ray tells them

02 50 20PM 19 that the point of this exercise is to have an

02 50 25PM 20 altered experience. He tells them that the heat

02 50 28PM 21 will be the most intense they've ever experienced.

02 50 31PM 22 He tells them they will feel like they're going to

02 50 34PM 23 die, and he challenges them to play full-on.

02 11 22PM 24 (Audio recording played.)

02 50 39PM 25 MS. POLK: In this briefing Mr. Ray further

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02 52 41PM 1 describes the tent and the challenge and the
02 52 45PM 2 ceremony, and he tells his participants that their
02 52 48PM 3 skin will feel like it's going to fall off their
02 52 51PM 4 body and that they have to face death and overcome
02 52 54PM 5 it.

02 11 22PM 6 (Audio recording played.)

02 55 48PM 7 MS. POLK: Mr. Ray tells his participants they
02 55 52PM 8 will be in an extreme altered state.

02 11 22PM 9 (Audio recording played.)

02 56 42PM 10 MS. POLK: Mr. Ray then tells the participants
02 56 45PM 11 that if they must leave, they can only leave
02 56 47PM 12 between rounds and when the gate or the opening is
02 56 51PM 13 open.

02 11 22PM 14 (Audio recording played.)

02 56 31PM 15 MS. POLK: And, finally, shortly before
02 56 35PM 16 leading his followers into the sweat lodge, Mr. Ray
02 56 38PM 17 tells the participants to bring a determination of
02 56 41PM 18 steel.

02 56 51PM 19 (Audio recording played.)

02 59 15PM 20 MS. POLK: You will hear testimony in this
02 59 17PM 21 case from several doctors. The doctors will tell
02 59 20PM 22 you that heat-related injuries occur on a
02 59 22PM 23 continuum, from heat exhaustion at the early stages
02 59 27PM 24 to heat stroke at the later stages.

02 59 29PM 25 The symptoms of heat-related injuries
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02 59 32PM 1 include muscle cramps, nausea, vomiting, weakness,
02 59 37PM 2 and altered mental states, the exact symptoms that
02 59 41PM 3 Mr. Ray had just told his participants to face, to
02 59 46PM 4 ignore and to conquer.

02 59 52PM 5 These symptoms of heat-related injuries
02 59 55PM 6 are points on this continuum of progression from
02 59 58PM 7 heat exhaustion to heat stroke. In other words,
03 00 02PM 8 once a person begins to suffer from heat-induced
03 00 05PM 9 injuries, the injuries will progress along this
03 00 09PM 10 continuum, leading to death if the person is not
03 00 13PM 11 removed from the heated environment and treated
03 00 17PM 12 immediately to cool him down.

03 00 20PM 13 Witnesses in this case will testify that
03 00 23PM 14 in this pre-ceremony briefing that you just heard,
03 00 27PM 15 Mr. Ray led them to believe that these symptoms of
03 00 32PM 16 heat-induced injuries that they would experience
03 00 34PM 17 during the heat endurance challenge were normal and
03 00 37PM 18 that it was safe to ignore their bodies' symptoms
03 00 40PM 19 in order to play full-on and achieve the altered
03 00 44PM 20 state.

03 00 45PM 21 In fact, the doctors will testify that
03 00 51PM 22 what Mr. Ray was describing for his participants in
03 00 54PM 23 that pre-ceremony briefing and telling them to
03 00 56PM 24 ignore are the signs and symptoms of heat-related
03 00 58PM 25 injuries, which if left untreated can and did lead

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03 01 03PM 1 to death.

03 01 06PM 2 After the briefing, the participants were
03 01 08PM 3 given 15 minutes to change into bathing suits or
03 01 12PM 4 shorts and told to meet down by the fire at the
03 01 14PM 5 sweat lodge.

03 01 18PM 6 Sometime around 2:30 on Thursday
03 01 24PM 7 afternoon -- no one is quite sure of the exact
03 01 28PM 8 time -- 56 people -- participants, Dream Team
03 01 30PM 9 members, Mr. Ray the defendant, and some of his
03 01 33PM 10 staff -- lined up and entered this sweat lodge
03 01 38PM 11 structure.

03 01 39PM 12 The tent in which Mr. Ray conducted his
03 01 42PM 13 heat endurance event was built by the Angel Valley
03 01 47PM 14 Retreat Center and inspected and approved by
03 01 50PM 15 Mr. Ray. The tent was first constructed in 2008
03 01 53PM 16 and used by several other groups throughout 2008
03 01 56PM 17 and 2009 to hold sweat lodge ceremonies without
03 02 01PM 18 incident. The structure was only about four feet
03 02 04PM 19 tall at its highest point.

03 02 07PM 20 As you have heard, participants were told
03 02 09PM 21 that if they had to leave, they could only leave
03 02 12PM 22 between rounds when the gate was open, and they had
03 02 15PM 23 to leave clockwise. For example, if a participant
03 02 18PM 24 was seated next to Mr. Ray, who was at the opening
03 02 23PM 25 or the gate, they had to crawl clockwise all the

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03 02 28PM 1 way around the tent in order to exit.

03 02 30PM 2 The tent was very, very, very crowded
03 02 36PM 3 with two rows of people along the back side and
03 02 39PM 4 participants sitting shoulder to shoulder.

03 02 43PM 5 Once everyone was inside, Mr. Ray, who
03 02 47PM 6 sat by the opening, directed that 12 superheated
03 02 51PM 7 rocks that he called "grandfathers" be brought in
03 02 54PM 8 and put inside the pit. The flap to the opening
03 02 58PM 9 was closed, and Mr. Ray took a five-gallon bucket
03 03 02PM 10 of water and threw it across the hot rocks,
03 03 05PM 11 creating waves of steam.

03 03 09PM 12 Over the next two to two and a half
03 03 11PM 13 hours, Mr. Ray performed eight rounds, each round
03 03 16PM 14 about 15 minutes long. In between each round the
03 03 19PM 15 flap was opened for a few minutes while more
03 03 22PM 16 superheated rocks were brought in and put into the
03 03 28PM 17 pit.

03 03 28PM 18 During that short period of time that the
03 03 31PM 19 flap was opened, participants who wanted to leave
03 03 33PM 20 and who could make it from their position in time
03 03 36PM 21 were allowed to get out. Mr. Ray would then order
03 03 39PM 22 the flap closed and throw another five-gallon
03 03 43PM 23 bucket of water on the new superheated rocks,
03 03 47PM 24 creating more searing steam.

03 03 51PM 25 The crime scene investigators later found
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03 03 54PM 1 55 rocks in the pit inside this tent. Participants
 03 04 01PM 2 will testify about the extreme searing heat created
 03 04 05PM 3 by Mr. Ray inside the tent. Some will testify how
 03 04 09PM 4 it was so hot that their skin burned. They will
 03 04 13PM 5 describe for you their inability to breathe, and
 03 04 17PM 6 they will tell you how scorching steam would wash
 03 04 21PM 7 over them at the beginning of each new round.
 03 04 25PM 8 Participants will also testify about
 03 04 29PM 9 their frame of mind; how they were led by Mr. Ray
 03 04 33PM 10 to trust that this intense heat experience was not
 03 04 37PM 11 dangerous; how they did not want to disappoint
 03 04 41PM 12 Mr. Ray; about their individual efforts to live up
 03 04 45PM 13 to Mr. Ray's expectations to stay inside the sweat
 03 04 49PM 14 lodge like a warrior in order to live impeccably
 03 04 53PM 15 and with honor; about their attempt to surrender to
 03 04 57PM 16 death in order to survive it, as promised by
 03 05 01PM 17 Mr. Ray, and about their trust in Mr. Ray's
 03 05 05PM 18 teachings that enduring the virtually unbearable
 03 05 09PM 19 heat to achieve an altered mental state was a good,
 03 05 13PM 20 healthy thing to do.
 03 05 17PM 21 You will also hear from witnesses how and
 03 05 21PM 22 when things began to go horribly wrong inside that
 03 05 25PM 23 tent. By round four many participants were
 03 05 29PM 24 suffering intensely.
 03 05 33PM 25 You will hear testimony that one
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03 05 29PM 1 participant in desperation crawled under the tent
 03 05 33PM 2 in the back to escape the heat during a round.
 03 05 37PM 3 Mr. Ray, who saw the light from the outside when
 03 05 41PM 4 this participant lifted the edge of the tent to
 03 05 45PM 5 crawl out, yelled out in a big, booming voice that
 03 05 49PM 6 it was blasphemous to the ceremony to do that.
 03 05 53PM 7 As you hear that testimony, ladies and
 03 05 57PM 8 gentlemen, think about the impact of Mr. Ray's
 03 06 01PM 9 words at that time, that disapproval, that calling
 03 06 05PM 10 out of blasphemous actions on the mindsets of those
 03 06 09PM 11 still inside.
 03 06 13PM 12 In between the fourth and the fifth
 03 06 17PM 13 rounds, many witnesses will describe for you how
 03 06 21PM 14 another participant, a man named Dennis, began
 03 06 25PM 15 screaming that he was having a heart attack and
 03 06 29PM 16 that he didn't want to die.
 03 06 33PM 17 Dennis will testify in this trial. He
 03 06 37PM 18 will tell you how desperately he wanted to stay in
 03 06 41PM 19 the tent the whole time to live up to Mr. Ray's
 03 06 45PM 20 expectations and that Mr. Ray had said to him, you
 03 06 49PM 21 will feel like you're going to die, but you will
 03 06 53PM 22 emerge on the other side.
 03 06 57PM 23 Dennis will testify he did feel like he
 03 07 01PM 24 was dying. Unable to take the heat any longer,
 03 07 05PM 25 Dennis tried to crawl out but passed out. He
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03 07 01PM 1 remembers nothing after that until he was outside
 03 07 04PM 2 the tent with water being poured on him.
 03 07 08PM 3 When he came too, he started violently
 03 07 12PM 4 vomiting, could not breathe, and thought his heart
 03 07 16PM 5 had stopped. Dennis lost consciousness again and
 03 07 20PM 6 remembers waking up with helicopters and paramedics
 03 07 24PM 7 at the scene. Dennis will testify that Mr. Ray
 03 07 28PM 8 came to him then, told him he had been reborn, and
 03 07 32PM 9 told him to go take a shower.
 03 07 36PM 10 Dream Team members, stationed outside the
 03 07 40PM 11 sweat lodge tent, and the fire tenders will testify
 03 07 44PM 12 that from the fourth round on participants were
 03 07 48PM 13 being dragged out of the tent unconscious, some
 03 07 52PM 14 vomiting, all in obvious distress.
 03 07 56PM 15 They will testify that these participants
 03 08 00PM 16 were dragged out right in front of Mr. Ray, who
 03 08 04PM 17 stayed at his position at the opening of this tent.
 03 08 08PM 18 Around the fourth or the fifth round,
 03 08 12PM 19 another man, named Lou Caci, will testify that he
 03 08 16PM 20 became delirious because of the heat. Lou tried to
 03 08 20PM 21 crawl out when the flap was opened but lost
 03 08 24PM 22 consciousness and put his arm in the pit with the
 03 08 28PM 23 hot rocks.
 03 08 32PM 24 Witnesses will describe the horrific
 03 08 36PM 25 scream that filled the tent. And those that were
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03 08 21PM 1 outside will describe how they saw Lou's arm with
 03 08 25PM 2 chunks of flesh falling off his hand and his arm.
 03 08 29PM 3 Witnesses will testify that in spite of
 03 08 33PM 4 these events, Mr. Ray did not stop this ceremony.
 03 08 37PM 5 In fact, for the last round Mr. Ray invited all
 03 08 41PM 6 those who had crawled outside to come back in,
 03 08 45PM 7 including Lou with the burned hand. Lou will
 03 08 49PM 8 testify that as he went back in, James Ray said to
 03 08 53PM 9 him, this last round is for you.
 03 08 57PM 10 You will hear testimony about many more
 03 09 01PM 11 participants who passed out, were dragged out right
 03 09 05PM 12 in front of Mr. Ray; about the chaos; about how
 03 09 09PM 13 some were left outside on tarps unconscious; how
 03 09 13PM 14 several wanted to stick it out and to endure this
 03 09 17PM 15 unbearable heat inside the tent to achieve, as
 03 09 21PM 16 promised by Mr. Ray, an altered state but how they
 03 09 25PM 17 remember nothing until they woke up in ICU at one
 03 09 29PM 18 of the local emergency rooms.
 03 09 33PM 19 And you will hear from witnesses how, in
 03 09 37PM 20 spite of all this chaos and medical distress,
 03 09 41PM 21 Mr. Ray did not stop the ceremony when he had a
 03 09 45PM 22 chance. Mr. Ray did not check up on those still
 03 09 49PM 23 inside his sweat lodge tent and that Mr. Ray
 03 09 53PM 24 continued to bring in more superheated rocks, more
 03 09 57PM 25 water, and created more searing heat and more
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03 09 58PM 1 burning steam.

03 10 06PM 2 I want to talk to you specifically about

03 10 08PM 3 the testimony and evidence concerning Liz Neuman.

03 10 11PM 4 As a Dream Team member, Liz was assigned a spot

03 10 13PM 5 inside the sweat lodge on the west side of the

03 10 19PM 6 tent. And she was told that her job was to stay

03 10 22PM 7 inside the tent and to support the participants.

03 10 25PM 8 The two women who were on either side of

03 10 28PM 9 Liz will testify in this case. They will tell you

03 10 31PM 10 how they kept tabs on each other by tapping one

03 10 34PM 11 another on the arm. Near the end of round seven,

03 10 38PM 12 they will describe Liz as limp, unresponsive, and

03 10 43PM 13 laying at a grotesque angle.

03 10 46PM 14 A woman named Laura will tell you that

03 10 48PM 15 she called out to Mr. Ray, James, I'm concerned

03 10 54PM 16 about Liz. When she didn't get an answer, Laura

03 10 59PM 17 called out again louder, James, I'm concerned about

03 11 04PM 18 Liz. This time she did get an answer from Mr. Ray.

03 11 10PM 19 And his response was, Liz has done this before.

03 11 15PM 20 She knows what she is doing.

03 11 20PM 21 Laura then grabbed Liz by the shoulder

03 11 23PM 22 and asked her if she needed help getting out. Liz,

03 11 26PM 23 who had just heard Mr. Ray pronounce that Liz was

03 11 31PM 24 fine, responded, no.

03 11 35PM 25 You will hear testimony that Mr. Ray did

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03 11 37PM 1 not check up on Liz when told of her condition,

03 11 41PM 2 that Mr. Ray remained in his spot by the opening

03 11 45PM 3 and, essentially, had just told Liz that she was

03 11 49PM 4 fine to stay inside the sweat lodge.

03 11 53PM 5 You will hear medical testimony that heat

03 11 58PM 6 induces confusion and that those that are at risk

03 12 01PM 7 for heat-induced injuries, such as heat stroke,

03 12 04PM 8 often cannot identify when they are at risk.

03 12 09PM 9 When Mr. Ray finally ended his heat

03 12 11PM 10 endurance challenge about two and a half hours

03 12 14PM 11 after it began, he came out first. He was hosed

03 12 18PM 12 down by his staff. He got himself some water. He

03 12 22PM 13 sat in a chair.

03 12 24PM 14 Those participants who were still

03 12 28PM 15 conscious crawled out. And those that could helped

03 12 31PM 16 others out. Liz Neuman was found unconscious,

03 12 34PM 17 still inside, and was dragged out of the tent.

03 12 39PM 18 The testimony in this case will reveal

03 12 41PM 19 that James Ray, the defendant, had very few medical

03 12 46PM 20 supplies on hand for this sweat lodge ceremony and

03 12 48PM 21 no emergency medical plan in spite of the remote

03 12 56PM 22 location that he had selected for this event.

03 13 00PM 23 Only one person on his staff who was at

03 13 04PM 24 the scene was trained in CPR. And Mr. Ray did not

03 13 04PM 25 have on hand a portable defibrillator or an AED.

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03 13 10PM 1 No ambulance was on standby at the scene. And

03 13 13PM 2 Mr. Ray had only a small first-aid kit with limited

03 13 17PM 3 supplies.

03 13 19PM 4 The 911 call that you heard was made by

03 13 21PM 5 the fire tender's wife at 5:19 p.m. Because of the

03 13 26PM 6 remote location of the retreat center, it took the

03 13 31PM 7 first responders about 20 minutes to arrive.

03 13 34PM 8 People were down everywhere, and

03 13 38PM 9 paramedics did their best to triage the scene.

03 13 41PM 10 They worked on Liz Neuman at the scene and

03 13 44PM 11 air-vaced her to the Flagstaff Medical Center,

03 13 49PM 12 trauma one center, at 6:22 p.m.

03 13 53PM 13 Liz arrive at 6:40 p.m. and doctors

03 13 58PM 14 immediately took over her care. Liz never regained

03 14 01PM 15 consciousness. She was taken off life support ten

03 14 04PM 16 days later, with her family by her side, pronounced

03 14 08PM 17 dead.

03 14 10PM 18 The medical examiner performed the

03 14 12PM 19 autopsy and determined the cause of death to be

03 14 16PM 20 multisystem organ failure due to hyperthermia,

03 14 20PM 21 which is the overheating of the body due to

03 14 23PM 22 prolonged sweat lodge exposure.

03 14 28PM 23 James Shore and Kirby Brown had positions

03 14 36PM 24 in the back of the tent.

03 14 38PM 25 THE COURT: Excuse me, Ms. Polk, I really hate

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03 14 42PM 1 to interrupt. We've gone well into the 90 minutes.

03 14 48PM 2 Excuse me for that. And we will resume.

03 14 48PM 3 Ladies and gentlemen, please remember the

03 14 50PM 4 admonition. No talking about the case. Don't let

03 14 54PM 5 anyone talk to you about it. Keep an open mind

03 14 58PM 6 about the case. And please be reassembled at 3:30

03 15 00PM 7 where Ms. Rybar directs.

03 15 02PM 8 We are in recess. Thank you.

03 15 02PM 9 (Recess.)

03 34 28PM 10 THE COURT: The record will show the presence

03 34 27PM 11 of the defendant, Mr. Ray, the attorneys, and the

03 34 29PM 12 jury.

03 34 29PM 13 Ms. Polk, you may continue with your

03 34 32PM 14 opening.

03 34 33PM 15 MS. POLK: Thank you, Your Honor.

03 34 36PM 16 James Shore and Kirby Brown had positions

03 34 38PM 17 in the far back of the tent. You will hear

03 34 41PM 18 testimony in this case that the air in the back

03 34 44PM 19 part of the tent seemed to be even hotter than

03 34 47PM 20 other areas.

03 34 48PM 21 Also seated in the back area of the tent

03 34 50PM 22 was a woman named Sidney Spencer. Sidney will

03 34 54PM 23 testify in this case. Sidney will describe the

03 34 59PM 24 complete, pitch-black darkness of the tent when the

03 35 03PM 25 door was closed. She will describe the heat in the

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03 35 07PM 1 back area of the tent as intense and superheated
 03 35 12PM 2 rocks in the pit as pulsating heat.
 03 35 16PM 3 Sidney will tell you that her mental
 03 35 21PM 4 status early on was compromised due to the heat.
 03 35 26PM 5 She remembers little and lost consciousness inside
 03 35 27PM 6 the sweat lodge.
 03 35 29PM 7 Several witnesses will testify that when
 03 35 32PM 8 the flap was opened between the sixth and the
 03 35 36PM 9 seventh round, James Shore dragged Sidney, who was
 03 35 43PM 10 unconscious, to the opening of the tent to the area
 03 35 47PM 11 where Mr. Ray sat, and then another participant
 03 35 52PM 12 dragged Sidney outside.
 03 35 56PM 13 Sidney was placed on a tarp outside still
 03 36 01PM 14 unconscious. It is unclear whether she received
 03 36 06PM 15 any attention from anyone until the paramedics
 03 36 10PM 16 arrived. But Sidney remembers losing consciousness
 03 36 13PM 17 inside the tent, then waking up in ICU at the
 03 36 17PM 18 Flagstaff Medical Center, where she remained for
 03 36 19PM 19 the next six days. Sidney survived.
 03 36 21PM 20 What is clear from testifying witnesses
 03 36 24PM 21 in this case is that in spite of Sidney and others
 03 36 30PM 22 being dragged out unconscious right past Mr. Ray,
 03 36 34PM 23 that Mr. Ray did not stop the sweat lodge ceremony
 03 36 37PM 24 or check on those inside to make sure that they
 03 36 37PM 25 were still okay.

Mina G. Hunt (928) 554-8522

03 36 45PM 1 In her position in the back of the sweat
 03 36 47PM 2 lodge, Kirby Brown had been struggling for some
 03 36 51PM 3 time. One of our first witnesses will testify that
 03 36 54PM 4 Kirby was having trouble breathing for several
 03 36 57PM 5 rounds.
 03 36 58PM 6 After dragging the unconscious Sidney
 03 37 01PM 7 Spencer from the back of the tent to the door,
 03 37 04PM 8 James Shore returned to the position in the back of
 03 37 06PM 9 the tent to where Kirby was.
 03 37 11PM 10 Several witnesses heard Kirby's troubled,
 03 37 16PM 11 labored breathing. Several witnesses will testify
 03 37 19PM 12 that someone, possibly James Shore, called out to
 03 37 24PM 13 Mr. Ray, Kirby is not breathing. She's passed out.
 03 37 31PM 14 I can't get her to move, or I need help over here,
 03 37 35PM 15 or words to that effect.
 03 37 40PM 16 You will learn in this trial that
 03 37 41PM 17 Mr. Ray, the defendant in this case, responded,
 03 37 45PM 18 we're closing the door. We'll deal with it when
 03 37 50PM 19 we're done, or words to that effect.
 03 37 53PM 20 Witnesses will testify that Mr. Ray did
 03 37 56PM 21 not check up on Kirby when someone called out that
 03 38 05PM 22 Kirby wasn't breathing. Instead, Mr. Ray said,
 03 38 09PM 23 we're closing the door. We'll deal with it when
 03 38 12PM 24 we're done.
 03 38 12PM 25 More rocks were brought in, more water,

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03 38 16PM 1 more steam and more heat. Kirby was gurgling.
 03 38 22PM 2 Witnesses will testify that they heard her
 03 38 26PM 3 breathing and that it sounded like a death rattle.
 03 38 30PM 4 Those around Kirby were themselves
 03 38 33PM 5 without any strength. And James Shore, weak and
 03 38 37PM 6 compromised, and another participant who will
 03 38 40PM 7 testify desperately tried to save Kirby's life.
 03 38 45PM 8 They pushed and pulled Kirby until she
 03 38 50PM 9 rolled over onto her side. And then that back part
 03 38 55PM 10 of the tent became quiet. And those still
 03 38 58PM 11 breathing focused on their own survival.
 03 39 01PM 12 Mr. Ray conducted eight rounds of this
 03 39 05PM 13 heat endurance event. He used 55 superheated
 03 39 10PM 14 rocks. And it lasted approximately two and a half
 03 39 13PM 15 hours.
 03 39 14PM 16 When it was first over, when it was
 03 39 16PM 17 finally over, Mr. Ray was the first person out.
 03 39 20PM 18 Those inside who could, crawled out, collapsed at
 03 39 24PM 19 the entrance and were dragged to places on the
 03 39 27PM 20 tarp.
 03 39 27PM 21 Because everyone had to come out
 03 39 29PM 22 clockwise, some who could crawl were met with
 03 39 33PM 23 obstacles, specifically other participants who had
 03 39 37PM 24 passed out and were lying across their paths. A
 03 39 40PM 25 couple of participants who had the strength dragged

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03 39 44PM 1 out a few who were unconscious.
 03 39 46PM 2 Outside the scene was chaotic. You will
 03 39 48PM 3 hear testimony in this case from the fire tender,
 03 39 52PM 4 his wife, and their daughter, who was 17 years old
 03 39 56PM 5 at the time.
 03 39 57PM 6 The fire tender's wife and his daughter
 03 40 00PM 7 both had positions throughout this heat endurance
 03 40 03PM 8 challenge right outside the door of the tent.
 03 40 06PM 9 Between rounds when the door was open they could
 03 40 09PM 10 see Mr. Ray.
 03 40 11PM 11 Their job was to hand him the hot rocks
 03 40 14PM 12 and the bucket of water. Both of them heard
 03 40 18PM 13 voices, they will testify, inside call out that
 03 40 21PM 14 someone was not breathing. Both of them will
 03 40 25PM 15 testify that they heard Mr. Ray respond, leave her
 03 40 28PM 16 alone until after this round.
 03 40 34PM 17 After Mr. Ray and others had exited the
 03 40 36PM 18 tent, the fire tender's wife looked inside. There
 03 40 40PM 19 through the light she could see three people still
 03 40 44PM 20 lying there. Everybody else had come out. She
 03 40 47PM 21 looked inside, and there through the light she
 03 40 51PM 22 could see three people still lying there in the
 03 40 55PM 23 dirt motionless.
 03 40 58PM 24 The fire tender's wife called out for
 03 41 01PM 25 help, and she and her husband and their 17-year-old

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03 41 04PM 1 daughter tore open the back of the tent.
 03 41 08PM 2 Seventeen-year-old Sara will testify.
 03 41 10PM 3 She saw a woman face down in the dirt and by her
 03 41 12PM 4 side a man face up and that they were holding
 03 41 14PM 5 hands. They were purple and blue and mottled,
 03 41 16PM 6 according to Sara.
 03 41 18PM 7 Sara and her parents pulled Kirby Brown
 03 41 20PM 8 and James Shore out of that tent. They also pulled
 03 41 22PM 9 a third person out, a man named Sean Ronan, who
 03 41 24PM 10 survived.
 03 41 26PM 11 911 had not yet been called. And it is
 03 41 28PM 12 the fire tender's wife, a woman named Debby Mercer,
 03 41 30PM 13 who next grabbed her cell phone and ran down the
 03 41 32PM 14 road to an area that gets cell phone service and
 03 41 34PM 15 called 911. You heard her on the phone earlier.
 03 41 36PM 16 Although they were cooled before arriving
 03 41 38PM 17 at the hospital, both Kirby Brown and James Shore
 03 41 40PM 18 never regained consciousness and were pronounced
 03 41 42PM 19 dead at the hospital that same day.
 03 41 44PM 20 Medical examiners determined the cause of
 03 41 46PM 21 death for each due to heat stroke.
 03 41 48PM 22 First responders, paramedics, and several
 03 41 50PM 23 helicopters all came to the scene to take care of
 03 41 52PM 24 the sick and the dying. Detectives from the
 03 41 54PM 25 Yavapai County Sheriff's Office also arrived.
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03 42 33PM 1 You have heard that three people died in
 03 42 35PM 2 Mr. Ray's superheated tent. That night the
 03 42 37PM 3 detective's secured the scene and interviewed those
 03 42 39PM 4 that they could. The next day the detectives took
 03 42 41PM 5 samples of the tent, the materials, the soil, the
 03 42 43PM 6 wood used to heat the rocks, the wood used to build
 03 42 45PM 7 the structure, and collected some of the rocks and
 03 42 47PM 8 then released the scene.
 03 42 49PM 9 The owners of Angel Valley Retreat Center
 03 42 51PM 10 will testify about the memorial service that they
 03 42 53PM 11 had at the scene and the burning of the sweat lodge
 03 42 55PM 12 structure at the site.
 03 42 57PM 13 Today the remaining rocks that were used
 03 42 59PM 14 by Mr. Ray for his heat endurance event remain at
 03 43 01PM 15 the Angel Valley Retreat Center in the shape of a
 03 43 03PM 16 heart to commemorate those that died there.
 03 43 05PM 17 In this case, ladies and gentlemen, you
 03 43 07PM 18 will hear from about 20 participants and two of the
 03 43 09PM 19 Dream Team members for the Spiritual Warrior 2009
 03 43 11PM 20 seminar and that heat endurance challenge. You
 03 43 13PM 21 won't hear from everyone who was inside the sweat
 03 43 15PM 22 lodge, however, as we would be here a long, long
 03 43 17PM 23 time and some of it would be redundant.
 03 43 19PM 24 THE COURT: Do you need some water, sir?
 03 43 21PM 25 JUROR: I'm okay.
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03 43 58PM 1 MS. POLK: You will hear more audio in this
 03 44 00PM 2 case and hear more of the context surrounding the
 03 44 02PM 3 audio that I played for you this afternoon.
 03 44 04PM 4 The heat endurance portion of the
 03 44 06PM 5 seminar, what happened inside the sweat lodge, was
 03 44 08PM 6 not recorded. And there is no audio of that.
 03 44 10PM 7 The fire tender, his wife, and daughter
 03 44 12PM 8 will testify, as will the owner of the Angel Valley
 03 44 14PM 9 Retreat Center and an employee. Medical personnel
 03 44 16PM 10 will also testify -- first responders, paramedics,
 03 44 18PM 11 doctors from the two hospitals, and the medical
 03 44 20PM 12 examiners who performed the autopsies. Detectives
 03 44 22PM 13 and scientists from the laboratories that tested
 03 44 24PM 14 some of the materials will testify.
 03 44 26PM 15 And then, finally, relatives of Kirby
 03 44 28PM 16 Brown, James Shore, and Liz Neuman will testify.
 03 44 30PM 17 And then the state will rest its case.
 03 44 32PM 18 The Yavapai County Grand Jury has
 03 44 34PM 19 indicted Mr. Ray on three counts of manslaughter
 03 44 36PM 20 for the deaths of Kirby Brown, James Shore, and
 03 44 38PM 21 Lizbeth Neuman.
 03 44 40PM 22 No one alleges that Mr. Ray intended to
 03 44 42PM 23 kill anyone in his tent. He has been charged with
 03 44 44PM 24 manslaughter.
 03 44 46PM 25 The crime of manslaughter is committed
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03 45 12PM 1 when a person is aware of a substantial and
 03 45 14PM 2 unjustifiable risk that is -- that can cause death
 03 45 16PM 3 and consciously disregards that fact and causes
 03 45 18PM 4 someone's death.
 03 45 20PM 5 The risk must be such that disregarding
 03 45 22PM 6 it was a gross deviation from the standard of
 03 45 24PM 7 conduct that a reasonable person would observe in
 03 45 26PM 8 the situation.
 03 45 28PM 9 The doctors during this trial will tell
 03 45 30PM 10 you that heat stroke is preventable and is a
 03 45 32PM 11 progression of points along a continuum from minor
 03 45 34PM 12 symptoms on one end to death at the other. Time is
 03 45 36PM 13 of the essence in treating a victim of heat stroke,
 03 45 38PM 14 to cool him or her down as rapidly as possible and
 03 45 40PM 15 reverse the effects of the heat on the body before
 03 45 42PM 16 it kills.
 03 45 44PM 17 Ladies and gentlemen, I ask at the
 03 45 46PM 18 conclusion of hearing all the evidence in this case
 03 45 48PM 19 that you find Mr. Ray, the defendant, guilty.
 03 45 50PM 20 I ask that you find him guilty of
 03 45 52PM 21 Count I, recklessly causing the death of Kirby
 03 45 54PM 22 Brown. And I ask that you find Mr. Ray, the
 03 45 56PM 23 defendant, guilty of Count II, for recklessly
 03 45 58PM 24 causing the death of Lizbeth Neuman. And I ask
 03 46 00PM 25 that you find Mr. Ray, the defendant, guilty of
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03:46:11PM 1 Count III, recklessly causing the death of James
 03:46:45PM 2 Shore.
 03:46:58PM 3 Thank you, ladies and gentlemen.
 03:47:00PM 4 And thank you, Your Honor.
 03:47:00PM 5 THE COURT: Thank you, Ms. Polk.
 03:47:00PM 6 Mr. Li, do you wish to make an opening
 03:47:00PM 7 statement at this time?
 03:47:01PM 8 MR. LI: Yes, I do, Your Honor. I will need
 03:47:04PM 9 about two minutes to set up bring an easel over and
 03:47:07PM 10 switch the various devices.
 03:47:07PM 11 (Pause in proceedings.)
 03:48:28PM 12 MR. LI: Thank you, Your Honor, ladies and
 03:48:33PM 13 gentlemen and the prosecutor.
 03:48:46PM 14 The deaths of James Shore, Kirby Brown
 03:48:51PM 15 and Liz Neuman, they're a tragedy. Nothing anybody
 03:48:58PM 16 says in this courtroom, nothing, is going to change
 03:49:03PM 17 that. Nothing is going to change the loss. I'm
 03:49:09PM 18 here to say that they died as a result of an
 03:49:13PM 19 accident, a tragic accident, not a crime.
 03:49:21PM 20 But what I say here, and, frankly,
 03:49:24PM 21 Ms. Polk or anyone else says in this courtroom,
 03:49:27PM 22 will not and is not intended to diminish the loss
 03:49:32PM 23 or the tragedy.
 03:49:36PM 24 Are we clear on that?
 03:49:40PM 25 Mr. Ray has waited a very long time to be
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03:49:45PM 1 here today. He has been eager for this day to
 03:49:49PM 2 come. Why? Because he's finally in a court of law
 03:49:58PM 3 where rules and the law applies.
 03:50:00PM 4 Now, on Friday Mr. Kelly grabbed this big
 03:50:11PM 5 blue book. And he told you that what is in it is
 03:50:16PM 6 the Constitution of the United States and of
 03:50:18PM 7 Arizona and the laws. And he asked you to commit
 03:50:24PM 8 that you would follow the laws that are in this
 03:50:28PM 9 book.
 03:50:33PM 10 That book is what makes our system great.
 03:50:38PM 11 That book, the Constitution and the laws, are a
 03:50:42PM 12 promise that our founders made to each and every
 03:50:47PM 13 one of us. And that promise is that the rules
 03:50:52PM 14 apply, that a man is presumed innocent. That's a
 03:51:01PM 15 promise our founders made and asked each and every
 03:51:05PM 16 one of you to keep.
 03:51:10PM 17 What does that mean? What does it mean
 03:51:13PM 18 to keep the promise the founders made? It means to
 03:51:18PM 19 listen to the law, to make the state prove each
 03:51:24PM 20 fact. Now, Ms. Polk said a lot of things this
 03:51:28PM 21 afternoon. Remember, the Judge told you that
 03:51:33PM 22 argument is not evidence.
 03:51:38PM 23 So what that promise means is for each
 03:51:41PM 24 and every one of you to commit to forcing, making,
 03:51:41PM 25 the state prove every fact beyond a reasonable
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03:51:44PM 1 doubt.
 03:51:47PM 2 This isn't a civil case where we're
 03:51:49PM 3 talking about compensating somebody for some loss.
 03:51:54PM 4 This isn't a traffic accident. This is a case in
 03:51:58PM 5 which the State of Arizona has accused Mr. Ray of
 03:52:03PM 6 killing three people. And what that requires and
 03:52:10PM 7 what your promise requires is that each and every
 03:52:13PM 8 fact be proven beyond a reasonable doubt.
 03:52:19PM 9 Now, what else does that promise mean?
 03:52:22PM 10 That promise also means that you don't go into the
 03:52:25PM 11 jury room with emotion, sympathy, anger, but that
 03:52:34PM 12 you listen hard to the evidence; that you don't go
 03:52:42PM 13 into the jury room with prejudice about a man's
 03:52:46PM 14 beliefs or, frankly, any of the beliefs of any of
 03:52:49PM 15 the participants or anybody's beliefs. We don't do
 03:52:54PM 16 that in this country.
 03:52:58PM 17 Your promise the founders asked you, each
 03:53:05PM 18 of you, to keep is to listen to the evidence. Not
 03:53:08PM 19 emotion, not prejudice, and not judge somebody,
 03:53:13PM 20 anybody, for their beliefs. The only thing that
 03:53:19PM 21 you can listen to is the evidence.
 03:53:23PM 22 So what does that evidence tell you? And
 03:53:28PM 23 we're going to talk about this. The first piece of
 03:53:32PM 24 evidence is this: It appears that the state is
 03:53:36PM 25 saying that Mr. Ray killed people because he
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03:53:40PM 1 encouraged them to stay beyond their abilities,
 03:53:45PM 2 that his words were sufficient to cause people to
 03:53:51PM 3 stay beyond their abilities, and for that he killed
 03:53:53PM 4 them.
 03:53:57PM 5 These people are all adults. Every one
 03:54:00PM 6 of them. These people were doctors, dentists,
 03:54:07PM 7 regular folks. They were adults. And in America
 03:54:15PM 8 adults, people, have a right to choose for
 03:54:17PM 9 themselves.
 03:54:19PM 10 And can we get one thing straight? You
 03:54:21PM 11 listened to a lot of tapes, taken out of context,
 03:54:25PM 12 I'll submit, a lot of tapes of what Mr. Ray said
 03:54:28PM 13 during this event about altered states of
 03:54:31PM 14 consciousness and about him being God, all these.
 03:54:35PM 15 And we'll get to that in a second. You heard a lot
 03:54:37PM 16 of tape.
 03:54:38PM 17 I'll tell you one thing you didn't hear.
 03:54:41PM 18 You better do this. If you don't do this, I'll
 03:54:45PM 19 hurt you. You heard no force at all. What you
 03:54:47PM 20 heard was somebody saying, you can do it. You can
 03:54:51PM 21 do this. You can do this.
 03:54:55PM 22 Mr. Ray didn't force anyone to go into
 03:54:57PM 23 the sweat lodge. Mr. Ray didn't force anyone to
 03:55:01PM 24 stay in the sweat lodge. Mr. Ray didn't force
 03:55:05PM 25 anybody from leaving the sweat lodge. But they
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03 55 08PM 1 could leave.
 03 55 10PM 2 How do you know this is the truth? You
 03 55 13PM 3 don't have to take my word for it. You're going to
 03 55 16PM 4 hear witnesses tell you, each and every one of
 03 55 19PM 5 them, yeah, I'm an adult. I can leave. Nobody
 03 55 21PM 6 forced me. People choose for themselves. And you
 03 55 24PM 7 know what. People made these choices months before
 03 55 27PM 8 the seminar.

03 55 30PM 9 This is a waiver. What happened was when
 03 55 33PM 10 people signed up for the seminar, they got an
 03 55 36PM 11 information package. Okay? It said here's what
 03 55 39PM 12 you're going to do. Here's how much it costs.
 03 55 42PM 13 Here's how to get there. Here's the menu. And
 03 55 45PM 14 here's a waiver form. There are actually two of
 03 55 48PM 15 them.

03 55 51PM 16 And contrary to what the state said, this
 03 55 54PM 17 waiver actually describes some of the activity. So
 03 55 57PM 18 it's not quite true that people didn't know what
 03 56 00PM 19 was going to happen.

03 56 03PM 20 So this is the Vision Quest. This is a
 03 56 06PM 21 day and a half out in the desert with the sleeping
 03 56 09PM 22 bag by yourself. A lot of people do that. It says
 03 56 12PM 23 right there a Vision Quest, a multiday, solitary,
 03 56 15PM 24 personal, spiritual quest in the wilderness without
 03 56 18PM 25 food or water.

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03 56 34PM 1 Nobody was surprised by this. You're
 03 56 37PM 2 going to hear testimony from people say yeah. I
 03 56 40PM 3 got the waiver. I signed it. I read it. That's
 03 56 43PM 4 what they're for.

03 56 46PM 5 And the waiver talked about a sweat
 03 56 49PM 6 lodge. So it's not quite true that nobody knew
 03 56 52PM 7 anything about any sweat lodge. This waiver said a
 03 56 55PM 8 sweat lodge ceremony, described that you would
 03 57 02PM 9 participate in a sweat lodge ceremony, a ceremonial
 03 57 05PM 10 sauna involving tight, enclosed spaces and intense
 03 57 08PM 11 temperatures.

03 57 12PM 12 And people were free to choose whether
 03 57 15PM 13 they wanted to do this or not. And it says, the
 03 57 18PM 14 waiver says, if I do choose to participate in any
 03 57 21PM 15 of the activities, I affirm that I have not been
 03 57 24PM 16 nor will I be coerced or persuaded in any way to do
 03 57 27PM 17 so. I assume full responsibilities for and risk of
 03 57 30PM 18 any injuries sustained in connection with the
 03 57 33PM 19 activities, whether caused by the negligence of the
 03 57 36PM 20 releasees -- that's Mr. Ray's company and Mr. Ray
 03 57 39PM 21 himself -- or otherwise.

03 57 42PM 22 This waiver was sent out months before.
 03 57 45PM 23 So people were aware that they were going to do a
 03 57 48PM 24 sweat lodge and that they were going to do a Vision
 03 58 04PM 25 Quest or a fast. And they said sign me up.

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03 58 14PM 1 You're going to hear that people also
 03 58 18PM 2 chose -- just -- the waiver says you can choose.
 03 58 24PM 3 And, in fact, people did choose. But you're also
 03 58 28PM 4 going to hear that people chose not to participate.
 03 58 31PM 5 Okay. So for instance -- this is before and during
 03 58 36PM 6 the seminar.

03 58 37PM 7 So, for instance, you're going to hear
 03 58 39PM 8 evidence that two sisters who signed up, paid the
 03 58 42PM 9 money, wanted to go do this, signed the waivers,
 03 58 45PM 10 did everything, showed up to the Angel Valley
 03 58 48PM 11 resort, participated a little bit. And you know
 03 58 51PM 12 what. They decided this is not for me. I don't
 03 58 54PM 13 like this. So they left. People are free to
 03 58 58PM 14 choose.

03 59 00PM 15 You're also going to hear that a woman
 03 59 02PM 16 before the sweat lodge ceremony -- somebody not
 03 59 05PM 17 mentioned by the state, somebody who apparently was
 03 59 08PM 18 not conditioned -- said boy, that description of
 03 59 12PM 19 the sweat lodge ceremony -- skin falling off, too
 03 59 15PM 20 hot -- that's not for me. So she decided she
 03 59 19PM 21 wasn't going to participate.

03 59 23PM 22 Now, Mr. Ray also told all of the
 03 59 26PM 23 participants you know what. If this is too hot, if
 03 59 30PM 24 this is too much, you can leave. But leave safely.
 03 59 42PM 25 That's what that speech is all about.

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03 59 51PM 1 (Audio recording played.)
 04 01 20PM 2 MR. LI: Do you get this? There is a pit in
 04 01 22PM 3 the center filled with hot rocks. Okay? If you
 04 01 26PM 4 say hey, everybody leave, that's not going to be a
 04 01 29PM 5 very pretty sight. So what the procedure was is
 04 01 35PM 6 everybody leaves when there is light, when you can
 04 01 37PM 7 see, and go out in one direction. Don't rush the
 04 01 40PM 8 door. I'm going to play a tape for you later on in
 04 01 44PM 9 which he says exactly that.

04 01 46PM 10 But that's the point. It's not a control
 04 01 49PM 11 thing. That's not what the evidence is going to
 04 01 51PM 12 show. What the evidence is going to show is that
 04 01 54PM 13 this is a hot pit in the center. And if you're
 04 01 57PM 14 going to leave, go around it. Don't rush to the
 04 02 00PM 15 door.

04 02 02PM 16 You know what else you're going to hear,
 04 02 06PM 17 ladies and gentlemen? You're going to hear that
 04 02 07PM 18 people did, in fact, choose to leave during the
 04 02 12PM 19 sweat lodge ceremony.

04 02 14PM 20 So, now, while the state says that all of
 04 02 17PM 21 these folks were conditioned and they couldn't make
 04 02 20PM 22 decisions for themselves, you're going to hear that
 04 02 23PM 23 about 20 people give or take went in and out. Some
 04 02 28PM 24 people left. Some people drank some water, cooled
 04 02 33PM 25 themselves off, and they came back in. And some

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04 02 36PM 1 people left because it just wasn't for them.

04 02 38PM 2 In fact, in the first round three people

04 02 42PM 3 left. Second round I think about three people

04 02 46PM 4 left. The third round more people left. These

04 02 50PM 5 people were not conditioned to stay.

04 02 53PM 6 People choose for themselves. Now, one

04 02 57PM 7 thing you didn't see in the state's presentation

04 03 01PM 8 was what the sweat lodge actually is and looks

04 03 05PM 9 like. We heard about an hour of Mr. Ray's beliefs

04 03 09PM 10 or at least some of his conversations, but we

04 03 11PM 11 didn't actually see the sweat lodge.

04 03 13PM 12 Well, this is the sweat lodge. It's not

04 03 14PM 13 a building. It's a bunch of sticks and some

04 03 18PM 14 blankets. There is not a door. It's sleeping bags

04 03 20PM 15 and flaps. You're going to hear, for instance,

04 03 37PM 16 that one guy just wanted out and scooted out the

04 03 41PM 17 back underneath the blankets. They're not trapped

04 03 44PM 18 in there. They're just blankets. Scooted out the

04 03 47PM 19 back.

04 03 48PM 20 Now, Ms. Polk told you that Mr. Ray

04 03 49PM 21 screamed out in a booming voice that's

04 03 53PM 22 sacrilegious. I'm going to submit to you that what

04 03 55PM 23 the evidence is going to show is actually he said,

04 03 58PM 24 hey, who's got that flashlight in here? Turn it

04 04 00PM 25 off. That's sacrilegious. That's what you're

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04 04 03PM 1 going to hear.

04 04 04PM 2 Another guy left in the middle of the

04 04 06PM 3 round. You're told not to leave in the middle of

04 04 10PM 4 the round. The guy left anyway.

04 04 14PM 5 If the state's case really is that he's

04 04 17PM 6 so persuasive that he can make people do something

04 04 20PM 7 against their will, then you know what. He's not

04 04 23PM 8 very good at it. Because a lot of people left.

04 04 36PM 9 Nobody, nobody was coerced. People

04 04 41PM 10 choose for themselves. Not one witness, not one

04 04 45PM 11 witness is going to tell you that somebody forced

04 04 48PM 12 them to pick up James Ray's book about how to make

04 04 51PM 13 more money and how to live a more successful life.

04 04 53PM 14 Not one witness is going to tell you oh,

04 04 58PM 15 somebody forced me to read it. Not one witness is

04 04 58PM 16 going to say somebody forced me to sign up for that

04 05 01PM 17 course. Not one witness is going to say somebody

04 05 03PM 18 forced me to participate in the course, to go do

04 05 07PM 19 the events.

04 05 07PM 20 I'm going to tell you a little bit about

04 05 10PM 21 the Samurai Game in a bit. Okay? But the state

04 05 18PM 22 left you with an impression it was some sort of I

04 05 21PM 23 am God, by taking a bunch of tapes out of context.

04 05 21PM 24 Do you want to know what the Samurai Game was, this

04 05 24PM 25 guy that made people unable to control themselves

Mina G Hunt (928) 554-8522

04 05 27PM 1 anymore, that made them unlike any other adults in

04 05 30PM 2 the United States?

04 05 31PM 3 This game was a corporate, like,

04 05 34PM 4 team-building game, the kind of game you might see

04 05 37PM 5 at AT&T. You want to know what the battles were?

04 05 41PM 6 We heard a lot about rules and that if you broke

04 05 43PM 7 the rules, you died. Well, there were a bunch of

04 05 46PM 8 battles between the various samurai.

04 05 48PM 9 You want to know what these battles were?

04 05 50PM 10 There was an egg-and-spoon race, a spoon with an

04 05 55PM 11 egg, and you run around with it. There was a

04 05 58PM 12 water-drinking contest. Whoever drinks the glass

04 06 02PM 13 quickest wins. There was a staring contest. First

04 06 05PM 14 person to blink losses. There was a throwing-star

04 06 09PM 15 contest where you crumpled up some tin foil, walk a

04 06 14PM 16 few paces turned around and threw it.

04 06 17PM 17 These are the games, these corporate

04 06 19PM 18 games, that the state contends made people unlike

04 06 23PM 19 every other American in the United States, unable

04 06 25PM 20 to choose for themselves. People choose for

04 06 30PM 21 themselves.

04 06 31PM 22 Now, I'm going to address that theory a

04 06 37PM 23 little more, this whole idea that adults -- I'm

04 06 40PM 24 going to call this the

04 06 43PM 25 "adult-can't-choose-for-themselves theory." I will

Mina G. Hunt (928) 554-8522

04 06 46PM 1 address that in a bit. But before I get there, I

04 06 50PM 2 want you to know there are other theories out

04 06 52PM 3 there. And if you're wondering how this could have

04 06 55PM 4 happened, how a sweat lodge could have resulted in

04 06 58PM 5 three deaths, people going to the hospital -- if

04 07 02PM 6 you're wondering that, you are not alone. There

04 07 06PM 7 were many people who are wondering exactly that

04 07 10PM 8 same thing and came up with very -- and I'm not

04 07 13PM 9 talking about me. There were other people who were

04 07 15PM 10 dealing with this exact case who thought of other

04 07 18PM 11 things other than the

04 07 21PM 12 people-can't-choose-for-themselves theory.

04 07 24PM 13 Here's some evidence that the state

04 07 28PM 14 neglected to tell you: This is about heat stroke.

04 07 31PM 15 You guys are familiar with the concept that when

04 07 33PM 16 you get hot, you can get tingly and you can get

04 07 39PM 17 light headed and what have you. That's called

04 07 41PM 18 "heat exhaustion." Okay? Probably many of us have

04 07 45PM 19 had that at some point or another. If you live in

04 07 48PM 20 Arizona, you probably have had that.

04 07 50PM 21 Heat stroke is not just one step down the

04 07 53PM 22 continuum. Heat stroke is when your organs fail

04 07 58PM 23 and you die. And heat stroke requires -- you're

04 08 03PM 24 going to learn two very critical diagnostic

04 08 08PM 25 criteria.

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04 08 09PM 1 One -- and this should be obvious. I
 04 08 33PM 2 don't know if you can read that. Elevated
 04 08 35PM 3 temperature. Can you read that? Elevated
 04 08 40PM 4 temperature. And this is not 101, something like
 04 08 49PM 5 that. This is 104, 105, 106. This is when your
 04 08 52PM 6 organs are starting to fail.
 04 08 52PM 7 With those of you with children, if your
 04 08 53PM 8 daughter has a 105 or 104, you better take her to
 04 08 58PM 9 the hospital. Okay? This is well beyond the
 04 09 04PM 10 tingly fingers and the dizziness and nausea. This
 04 09 09PM 11 is unconscious.
 04 09 11PM 12 The second thing you need in order to be
 04 09 14PM 13 diagnosed with heat stroke clinically, medically,
 04 09 16PM 14 clinically, is severe dehydration. I think you can
 04 09 37PM 15 read that. Severe dehydration. And you know --
 04 09 41PM 16 you all know that when you get hot, you sweat a
 04 09 44PM 17 lot. If you get so hot you're suffering heat
 04 09 47PM 18 stroke, you're going to sweat so much your body
 04 09 50PM 19 can't sweat anymore. It messes up your body
 04 09 55PM 20 chemistry. Okay? And at a certain point you're
 04 09 56PM 21 not able to sweat anymore.
 04 09 57PM 22 One of the critical criteria you look for
 04 10 00PM 23 in a healthy adult is dehydration. These are
 04 10 05PM 24 critical, clinical criteria for heat stroke.
 04 10 09PM 25 Here's something interesting, something interesting
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04 10 12PM 1 that the state didn't tell you about: Not one
 04 10 14PM 2 person, not any of the decedents, not any of the
 04 10 21PM 3 people who went to the hospital, not one person had
 04 10 26PM 4 a severely elevated temperature, meaning 104, 105,
 04 10 32PM 5 106.
 04 10 32PM 6 Most of them were either normal or low.
 04 10 38PM 7 I'll repeat that. Most of them were either normal
 04 10 41PM 8 or low.
 04 10 45PM 9 The second interesting thing, ladies and
 04 10 47PM 10 gentlemen, is that none of the participants, any of
 04 10 54PM 11 them -- people who passed, people who went to the
 04 10 58PM 12 hospital -- not a single one of them suffered from
 04 11 03PM 13 severe dehydration.
 04 11 11PM 14 Now, this issue was important to the
 04 11 14PM 15 state -- severe dehydration -- because when they --
 04 11 20PM 16 I'm going to explain the slide in a second. When
 04 11 24PM 17 they did the autopsies of two of the participants,
 04 11 26PM 18 they asked for what's called "vitreous fluid."
 04 11 30PM 19 They asked for a test about the vitreous fluid.
 04 11 33PM 20 The vitreous fluid is the fluid in the
 04 11 35PM 21 eye. And it's used to see if somebody is
 04 11 41PM 22 dehydrated, among other things. And look what the
 04 11 46PM 23 state medical examiners wrote. Vitreous is very,
 04 11 52PM 24 underlined twice, very important, underlined twice,
 04 11 52PM 25 in this case.
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04 11 54PM 1 Why did they do that? Because
 04 11 58PM 2 dehydration is a really important fact if you're
 04 12 01PM 3 going to say somebody died of heat stroke. And you
 04 12 04PM 4 know what. Somebody is going to explain this to
 04 12 04PM 5 you.
 04 12 08PM 6 But, basically, this is Ms. Brown's test.
 04 12 15PM 7 Came back negative. Not severely dehydrated. So
 04 12 27PM 8 nobody had an elevated, extremely elevated, body
 04 12 31PM 9 temperature. Many people were cool. Nobody showed
 04 12 35PM 10 severe dehydration.
 04 12 37PM 11 So what did the medical examiners do?
 04 12 40PM 12 Well, you'll find out they didn't look at all the
 04 12 44PM 13 evidence. And they listened to -- well, they were
 04 12 46PM 14 in a sweat lodge. It was really hot. And so they
 04 12 50PM 15 relied on what's called "circumstantial evidence."
 04 12 52PM 16 Sweat lodge hot. They must have died of heat
 04 12 56PM 17 stroke.
 04 12 58PM 18 That might be okay for just for a medical
 04 13 02PM 19 report that determines the cause of death. But
 04 13 05PM 20 it's not okay in a case where a man stands accused
 04 13 10PM 21 of killing people. That's not okay.
 04 13 18PM 22 Ladies and gentlemen, you're going to
 04 13 20PM 23 learn that the state looked in one direction, in
 04 13 24PM 24 one direction only. Let me talk about one
 04 13 29PM 25 direction they didn't look. The first thing you
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04 13 34PM 1 need to understand before we even get into the
 04 13 38PM 2 actual medical evidence is that Mr. Ray did not
 04 13 41PM 3 build or own or store or anything the lodge.
 04 13 46PM 4 He rented it for about two and a half
 04 13 48PM 5 hours out of 365 days. He rented it from a
 04 13 53PM 6 facility called "Angel Valley Resort. " Now, I'm
 04 13 56PM 7 going to repeat this. Mr. Ray does not own Angel
 04 14 00PM 8 Valley Resort. He rented it just like if you were
 04 14 02PM 9 going to rent the Prescott Conference Center or
 04 14 08PM 10 hotels to put on a conference. That's what he did.
 04 14 09PM 11 He rented it.
 04 14 11PM 12 Angel Valley provided lodging, food,
 04 14 19PM 13 beverages and everything you might need in a
 04 14 22PM 14 retreat. And they charged a significant amount of
 04 14 25PM 15 money. This is from the contract that Mr. Ray's
 04 14 30PM 16 group, Mr. Ray's company, JRI, signed with Angel
 04 14 37PM 17 Valley.
 04 14 38PM 18 Angel Valley would also by contract
 04 14 42PM 19 provide a sweat lodge if you wanted one. So this
 04 14 46PM 20 was another option made available at extra
 04 14 48PM 21 charge -- a sweat lodge. So let's just get that
 04 14 52PM 22 clear.
 04 14 52PM 23 Mr. Ray didn't build the sweat lodge. He
 04 14 55PM 24 didn't own it. He didn't construct it. He didn't
 04 14 58PM 25 design it. He didn't do anything but rent it for
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04 15 01PM 1 two and a half hours out of 365 days.
 04 15 08PM 2 Now, you might be asking so why does that
 04 15 10PM 3 matter? Why does it matter? Well, because you're
 04 15 12PM 4 going to learn that in the course of this
 04 15 14PM 5 investigation from day one people suspected toxins.
 04 15 23PM 6 What's a toxin? A poison. People suspected from
 04 15 28PM 7 day one toxins.

04 15 31PM 8 You're going to hear that on the night of
 04 15 34PM 9 the incident, of the accident -- this is sometime
 04 15 38PM 10 in the late evening. The Yavapai County Sheriffs
 04 15 42PM 11 were interviewing a lot of folks. They were -- had
 04 15 46PM 12 tape recorders there. And so they were
 04 15 48PM 13 interviewing somebody. And in the middle of the
 04 15 50PM 14 interview, an EMT guy -- I'm not sure who it is.
 04 15 53PM 15 I'm going to call him "an unknown male." But he
 04 15 56PM 16 sounds like an EMT. He walks in, and he says, hey
 04 15 59PM 17 ladies and gentlemen. I need your attention.
 04 16 01PM 18 Okay?

04 16 01PM 19 Here's what he said:
 04 16 10PM 20 (Audio recording played.)

04 17 05PM 21 MS. POLK: Your Honor -- excuse me, Mr. Li.
 04 17 07PM 22 May I approach?

04 17 08PM 23 THE COURT: Yes.
 04 17 28PM 24 (Sidebar conference.)

04 17 28PM 25 THE COURT: Okay.
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04 17 29PM 1 MS. POLK: Your Honor, out-of-court statements
 04 17 34PM 2 from individuals other than Mr. Ray are clearly
 04 17 36PM 3 hearsay. And there is no theory, there is no rule
 04 17 39PM 4 of evidence, that allows them to come in other than
 04 17 43PM 5 for impeachment purposes.

04 17 45PM 6 Mr. Li is offering this as proof of the
 04 17 49PM 7 matter asserted. And these are -- actually says
 04 17 53PM 8 unknown male. Even if it's a known male, it
 04 17 55PM 9 doesn't come in under any rule of evidence. It
 04 17 58PM 10 would only come in if this person at trial
 04 18 01PM 11 testified, was confronted with the prior statement
 04 18 04PM 12 and denied it or testified inconsistently.

04 18 08PM 13 I'm raising the objection now if Mr. Li
 04 18 11PM 14 intends to play more hearsay that is clearly
 04 18 14PM 15 inadmissible in his opening. He ought not to be
 04 18 18PM 16 allowed to continue in this fashion.

04 18 20PM 17 MR. LI: If I may. The state also played
 04 18 25PM 18 out-of-court statements. These are not offered for
 04 18 28PM 19 the truth of the matter, simply things the
 04 18 30PM 20 investigators are aware of, were told, and did not
 04 18 33PM 21 follow up. And that's what I'm going -- they are
 04 18 36PM 22 admissible for that purpose.

04 18 38PM 23 MS. POLK: Your Honor, he's offering them to
 04 18 40PM 24 prove that there were toxins or that --

04 18 43PM 25 MR. LI: I'm not.
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04 18 44PM 1 THE COURT: Go ahead, Ms. Polk.

04 18 48PM 2 MS. POLK: He's offering them to prove, as he
 04 18 48PM 3 said from day one, lots of people suspected toxins.
 04 18 53PM 4 That's why he's offering it. It is clearly
 04 18 58PM 5 hearsay. It's clearly inadmissible. I did not
 04 18 59PM 6 offer anything other than one question, and it was
 04 19 02PM 7 not a statement. It was a question about should
 04 19 04PM 8 they sleep. Other than that I offered everything
 04 19 06PM 9 that was Mr. Ray's and clearly admissible. This is
 04 19 09PM 10 inadmissible. It's not going to come in during
 04 19 12PM 11 trial.

04 19 13PM 12 THE COURT: Go ahead, Mr. Li --

04 19 14PM 13 MR. LI: Sorry, Your Honor.

04 19 18PM 14 THE COURT: -- so Mina gets it.

04 19 20PM 15 MR. LI: This is admissible. It's not offered
 04 19 23PM 16 for the truth of the matter asserted. You're going
 04 19 26PM 17 to see, Your Honor, they were given all these clues
 04 19 28PM 18 and they didn't follow up on them. That's the
 04 19 31PM 19 point. They ignored them. That was absolutely
 04 19 35PM 20 admissible.

04 19 36PM 21 THE COURT: I thought that based on what
 04 19 38PM 22 Ms. Polk was doing during her opening there was
 04 19 42PM 23 some kind of agreement about using --

04 19 45PM 24 MR. LI: Out of professional courtesy I didn't
 04 19 48PM 25 object to during her opening statement. There were
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04 19 52PM 1 objectionable things.

04 19 53PM 2 THE COURT: Normally evidence isn't viewed
 04 19 55PM 3 until it's admitted unless there is -- seen or
 04 19 58PM 4 heard until it's admitted.

04 20 00PM 5 MR. LI: The state had pictures of Kirby Brown
 04 20 03PM 6 and James Shore and Miss Neuman up on the screen
 04 20 08PM 7 for about an hour and a half, maybe two hours. I
 04 20 08PM 8 didn't object to that. I won't say there is any
 04 20 14PM 9 improper motive behind it. But they were left
 04 20 17PM 10 there for two hours.

04 20 18PM 11 I respectfully let Ms. Polk do her
 04 20 21PM 12 opening statement. We have every right to do this.
 04 20 23PM 13 We have a very good-faith basis to suggest that all
 04 20 26PM 14 of this is admissible. There are photographs of
 04 20 28PM 15 her. There are documents that are admissible. All
 04 20 31PM 16 of them are admissible. All we need is a
 04 20 34PM 17 good-faith basis. We have that.

04 20 38PM 18 This would be very prejudicial to let the
 04 20 39PM 19 state simply exclude something it doesn't want.

04 20 41PM 20 THE COURT: We're not into the evidentiary
 04 20 44PM 21 portion. That's what I said. I thought you both
 04 20 46PM 22 had some kind of agreement because normally you
 04 20 48PM 23 don't have this much evidence presented during an
 04 20 51PM 24 opening for evidence that has not been admitted.

04 20 54PM 25 I listened closely to what Ms. Polk was
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04 20 57PM 1 offering, though, and I believe it was ultimately
 04 21 00PM 2 going to be admissible.
 04 21 01PM 3 This would be admissible for that limited
 04 21 05PM 4 purpose you're saying? In other words, someone had
 04 21 10PM 5 an idea about this and it wasn't pursued and
 04 21 13PM 6 that's -- if there is evidence on that.
 04 21 13PM 7 MR. LI: There is.
 04 21 14PM 8 THE COURT: The problem is in putting it like
 04 21 16PM 9 that, it does look like it's offered for the truth.
 04 21 19PM 10 I've never given a 105 limiting instruction during
 04 21 22PM 11 an opening before.
 04 21 24PM 12 MR. LI: We do this at our own peril. If
 04 21 27PM 13 we're not able to produce this in evidence, that's
 04 21 28PM 14 what happens. I'm deadily confident this is
 04 21 32PM 15 absolutely admissible.
 04 21 38PM 16 THE COURT: Ms. Polk, go ahead.
 04 21 38PM 17 MS. POLK: I want to respond to that. What is
 04 21 40PM 18 admissible at trial if they want to call that
 04 21 43PM 19 witness, that witness can testify that is what he
 04 21 48PM 20 believed. What they are offering is an
 04 21 51PM 21 out-of-court statement from that witness. They
 04 21 54PM 22 don't get to substitute transcripts of earlier
 04 21 57PM 23 audios for live witnesses at trial.
 04 21 58PM 24 The only way that is admissible is if the
 04 22 01PM 25 speaker takes the stand and denies that he said it.
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04 22 05PM 1 Then they can play it to impeach him. There is not
 04 22 10PM 2 a good-faith basis that it would come in under any
 04 22 13PM 3 scenario.
 04 22 18PM 4 Actually, I don't know who the unknown
 04 22 22PM 5 male is, which makes it a double-hearsay problem.
 04 22 24PM 6 But there is no good-faith basis to play in an
 04 22 28PM 7 opening audio that would be admitted under an
 04 22 31PM 8 impeachment theory only. That's the only theory
 04 22 34PM 9 that this would even come in if this witness takes
 04 22 37PM 10 the stand and denies that he said this. Then he
 04 22 39PM 11 can be impeached.
 04 22 41PM 12 THE COURT: Ms. Polk, if Mr. Li is not
 04 22 45PM 13 offering it for the truth, if he's offering it for
 04 22 48PM 14 the fact that this idea was out there and out there
 04 22 50PM 15 early, and then there is evidence it wasn't pursued
 04 22 54PM 16 or wherever he's going with that --
 04 22 56PM 17 MR. LI: Yes, Your Honor.
 04 22 57PM 18 THE COURT: But the form of it I have a
 04 22 58PM 19 problem with, Mr. Li, because it is presented up
 04 23 01PM 20 there very authoritatively. And this jury until
 04 23 05PM 21 they're instructed don't know whether it's being
 04 23 11PM 22 offered for the proof or not. That's the issue.
 04 23 15PM 23 I'm already going to have to tell them now what the
 04 23 17PM 24 lawyers say now is not evidence.
 04 23 17PM 25 MR. LI: And I'll say it.
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04 23 18PM 1 THE COURT: I need to say that. I'm not going
 04 23 20PM 2 to give -- you can summarize. If you can say an
 04 23 24PM 3 idea was brought up to show that -- because if it's
 04 23 27PM 4 not offered for the truth and you want to preface
 04 23 30PM 5 it, you can do that.
 04 23 32PM 6 MR. LI: I'll do that.
 04 23 33PM 7 THE COURT: Not in that form. That is a
 04 23 34PM 8 misleading way to come in. I'm sustaining that.
 04 23 39PM 9 MS. POLK: Judge, I just would invite you to
 04 23 41PM 10 look at --
 04 23 43PM 11 THE COURT: It's up there. It should not be
 04 23 45PM 12 up there, Mr. Li. I know there were pictures and
 04 23 48PM 13 they weren't admitted.
 04 23 50PM 14 Go ahead, Ms. Polk.
 04 23 51PM 15 MS. POLK: He is offering it to prove that
 04 23 54PM 16 people believed that there could be carbon monoxide
 04 23 58PM 17 or other toxins out there. He is offering it to
 04 24 00PM 18 prove the truth of that statement.
 04 24 02PM 19 THE COURT: Yes. It appears that way. There
 04 24 05PM 20 is a way to say that these ideas were out and about
 04 24 08PM 21 for people to pursue. In that way I'm agreeing
 04 24 12PM 22 it's misleading. I'm sustaining your objection,
 04 24 15PM 23 Ms. Polk.
 04 24 15PM 24 MR. LI: Your Honor I will clear it up. This
 04 24 17PM 25 is just what people thought. I'm not saying that's
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04 24 18PM 1 what there was.
 04 24 20PM 2 THE COURT: I don't want other excerpts up
 04 24 23PM 3 there like that.
 04 24 24PM 4 MR. LI: Understood.
 04 24 28PM 5 THE COURT: Please take your seats.
 04 24 28PM 6 (End of sidebar conference.)
 04 24 38PM 7 THE COURT: Ladies and gentlemen, I'm going to
 04 24 40PM 8 remind you, remember, what the lawyers say is not
 04 24 43PM 9 evidence. Right now it's a summary of possible,
 04 24 48PM 10 potential evidence.
 04 24 49PM 11 And, Mr. Li.
 04 24 51PM 12 MR. LI: Thank you, Your Honor.
 04 24 54PM 13 Just so you're clear, I'm not saying -- I
 04 24 57PM 14 want to make very clear that we're not saying that
 04 25 00PM 15 this is what in fact -- that we know what caused
 04 25 03PM 16 these people to die. The only point is that at the
 04 25 07PM 17 very beginning there were people who were looking
 04 25 08PM 18 in other directions.
 04 25 12PM 19 And this EMT person was not the only
 04 25 14PM 20 person. These are notes from a criminalist. A
 04 25 18PM 21 criminalist is a person who tests for things like
 04 25 22PM 22 poisons, things like toxins. Like CSI, that sort
 04 25 27PM 23 of thing.
 04 25 28PM 24 And she says that the Yavapai County
 04 25 33PM 25 Sheriffs had questions about the soil that was
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04 25 34PM 1 under the victims. Could we analyze it? I told
 04 25 38PM 2 them we could if we needed -- if we did, we would
 04 25 43PM 3 need comparison samples.
 04 25 48PM 4 If it's heat stroke and that people just
 04 25 53PM 5 got too hot, what does it matter what the soil is
 04 25 58PM 6 underneath?
 04 26 00PM 7 Here's an interesting thing Ms. Polk told
 04 26 03PM 8 you, that they collected some dirt samples. You
 04 26 07PM 9 know what. Never tested them. Because the state
 04 26 14PM 10 looked in one direction, in one direction only.
 04 26 21PM 11 That's not the only red flag. You
 04 26 25PM 12 remember you heard about the fire tenders, the
 04 26 27PM 13 couple who were sort of the fire tenders? Here's
 04 26 32PM 14 how a sweat lodge works: There is a big fire pit,
 04 26 34PM 15 and you burn a bunch of wood. And you throw rocks
 04 26 38PM 16 in it. The rocks get hot. And you scoot them into
 04 26 41PM 17 the sweat lodge. So you got to burn some wood to
 04 26 44PM 18 heat up the rocks.
 04 26 45PM 19 Well, the fire tender on the night, on
 04 26 48PM 20 the night, of the accident told the sheriffs, I
 04 26 55PM 21 think it was the wood. This is the wood pile that
 04 27 04PM 22 they had there. Now, he said, I think it was the
 04 27 07PM 23 wood. See, normally we use tree wood. But, you
 04 27 11PM 24 see, the owners of Angel Valley -- we built all
 04 27 15PM 25 these cabins, and we have all this construction
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04 27 17PM 1 wood lying around.
 04 27 18PM 2 And the owner of Angel Valley said,
 04 27 22PM 3 hey -- you know -- use that. And the detective
 04 27 24PM 4 asked Mr. Mercer, this is the fire tender, well,
 04 27 28PM 5 did James Ray bring the wood? No, no, no, no, no.
 04 27 32PM 6 This is Mr. Hamilton, the owner of Angel Valley.
 04 27 35PM 7 He used the wood.
 04 27 37PM 8 Yeah. Yeah. Okay. But did James Ray
 04 27 39PM 9 bring the wood? Did he tell him what wood to use?
 04 27 41PM 10 No. It's construction wood at Angel Valley used to
 04 27 45PM 11 build the cabins.
 04 27 48PM 12 Now, Ms. Polk said that the detectives
 04 27 53PM 13 took a few pieces of wood. You want to know what
 04 27 56PM 14 they took? They took, I think, that one, that one,
 04 28 00PM 15 that one and maybe that one. They took four pieces
 04 28 03PM 16 of wood. What they didn't take was any of that.
 04 28 08PM 17 And by the way, the fire pit's right
 04 28 10PM 18 about here. You will see a bunch of photographs
 04 28 13PM 19 that will show you. Right about here. Didn't take
 04 28 15PM 20 any of that. And they didn't take any of that.
 04 28 21PM 21 Now, if you've ever built a fence or done
 04 28 30PM 22 any work on your house or been in construction, you
 04 28 33PM 23 know there is one thing you can't do. Okay?
 04 28 38PM 24 That's burn treated wood. That stuff will kill
 04 28 38PM 25 you. Some of it is filled with something called
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04 28 48PM 1 "CCA," chromium copper arsenate. Okay? Some of it
 04 28 47PM 2 is filled with other toxins. You cannot burn it.
 04 28 52PM 3 And you cannot take construction wood
 04 28 54PM 4 from your construction site and burn it in your
 04 28 57PM 5 fireplace. Do not do that. Why? Because it's
 04 29 01PM 6 filled with toxins.
 04 29 02PM 7 And what did the fire tender say on the
 04 29 05PM 8 day of the accident to the detectives? I think it
 04 29 08PM 9 was the wood. He repeated that -- and you know
 04 29 10PM 10 what. He's not the only guy. This is from that
 04 29 19PM 11 same criminalist. She said, did the wood have
 04 29 23PM 12 markings? Was it pressure treated? Could we
 04 29 26PM 13 source it to a manufacture? Why? Because it's
 04 29 31PM 14 dangerous.
 04 29 33PM 15 But they had only collected that piece,
 04 29 35PM 16 that piece, that piece and that piece. They didn't
 04 29 37PM 17 collect any of the rest. State looked in one
 04 29 44PM 18 direction, in one direction only.
 04 29 48PM 19 You're also going to hear that that same
 04 29 50PM 20 guy, Ted Mercer -- this is the fire tender -- he
 04 29 54PM 21 talked about how the tarps were stored. And
 04 30 00PM 22 Detective Diskin asked him, hey, where were the
 04 30 03PM 23 tarps stored?
 04 30 04PM 24 And he told the detective, you know what.
 04 30 07PM 25 They were stored in a shed right over there.
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04 30 10PM 1 Was anything wrong with the shed? Well,
 04 30 13PM 2 yeah. There is rat poison. There is rats around
 04 30 17PM 3 there, and I saw some rat poison on the ground.
 04 30 20PM 4 There are some chunks of rat poison. There has
 04 30 21PM 5 been rats there ever since I've before here, and we
 04 30 24PM 6 put poisons there.
 04 30 25PM 7 This is the day after the accident, after
 04 30 28PM 8 three people die and people go to the hospital.
 04 30 35PM 9 And the EMT is wondering hey, is there some toxic
 04 30 39PM 10 incident? This guy is telling the detectives,
 04 30 41PM 11 hey -- you know -- we stored the tarps in a bunch
 04 30 43PM 12 of -- with the rat poison and other poisons.
 04 30 47PM 13 How about poisons for spiders? black
 04 30 52PM 14 widows? scorpions? fleas? ants? wasps? You know,
 04 30 57PM 15 you're going to fold up a bunch of tarps in the
 04 31 00PM 16 shed. People put pesticide on it. And, in fact,
 04 31 03PM 17 the state's own witness is going to tell you yup.
 04 31 06PM 18 That's what I told the detective.
 04 31 10PM 19 James Ray did not store any of these
 04 31 13PM 20 tarps in any shed. James Ray didn't pick what wood
 04 31 19PM 21 to burn. James Ray didn't decide whether he should
 04 31 25PM 22 use insecticides or weed killer or anything at the
 04 31 30PM 23 Angel Valley Resort. Are we clear on that?
 04 31 33PM 24 Do you know who did that? Angel Valley
 04 31 35PM 25 Resort. It's their property. Now, I want to be
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04 31 37PM 1 absolutely clear. I'm not saying that Angel
 04 31 42PM 2 Valley -- they're a bunch of criminals. Okay?
 04 31 45PM 3 Let's get that clear. That's not what I'm saying.
 04 31 48PM 4 This is an accident. You know, they got
 04 31 51PM 5 paid a hundred thousand bucks to run this retreat,
 04 31 57PM 6 and people died. And the people who were involved
 04 32 03PM 7 in it, the people who were hired by Angel Valley to
 04 32 07PM 8 tend the rocks, store the tarps, to burn the wood,
 04 32 10PM 9 all those sorts of things -- that's what they think
 04 32 12PM 10 happened or that's what they said they thought
 04 32 16PM 11 happened on the night that it happened and the very
 04 32 18PM 12 next day.
 04 32 22PM 13 They may change their story now, but
 04 32 24PM 14 that's what they said when they were being
 04 32 27PM 15 interviewed on tape. Did the state follow up on
 04 32 30PM 16 that? No, they didn't. Because the state looked
 04 32 33PM 17 in one direction and one direction only.
 04 32 38PM 18 Here's the interesting thing: This isn't
 04 32 41PM 19 just some -- you know -- conspiracy theory,
 04 32 44PM 20 something like that. Because you know what. The
 04 32 46PM 21 doctors -- these are the ER doctors, the people who
 04 32 51PM 22 were treating the patients. Okay? We're talking
 04 32 55PM 23 about the people who have their hands on the
 04 32 58PM 24 patient who are trying to save their lives.
 04 33 00PM 25 These are not -- they don't care about
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04 33 02PM 1 James Ray. They don't care about the state. Those
 04 33 05PM 2 are the people who work really hard every single
 04 33 08PM 3 day to try to save lives. Okay? And they had
 04 33 10PM 4 their hands on patients.
 04 33 12PM 5 And you know what. They thought toxins
 04 33 15PM 6 too. Here's the first thing from Liz Neuman's ER
 04 33 23PM 7 doctor. This is on October 8, 2009. This is on
 04 33 24PM 8 the night of the incident. He says or writes, it
 04 33 29PM 9 is suspected that she had some sort of toxidrome
 04 33 32PM 10 ingestion, but otherwise this is not known.
 04 33 39PM 11 Toxidrome -- it should say drome, not
 04 33 41PM 12 drone. But a toxidrome is a cluster of symptoms
 04 33 45PM 13 associated with being poisoned. That's what the ER
 04 33 51PM 14 doctor on the night of the incident thought.
 04 33 59PM 15 There is another person, guy named
 04 34 02PM 16 Stephen Ray. No relation. He showed up to the ER
 04 34 07PM 17 in, basically, a coma. He was medevaced by
 04 34 12PM 18 helicopter to the hospital. Here's what they
 04 34 17PM 19 thought: Injury caused: Accidental poisoning.
 04 34 21PM 20 Mechanism: Chemical poisoning.
 04 34 26PM 21 Now, these folks, these doctors, knew
 04 34 32PM 22 that this was an incident that had happened in a
 04 34 35PM 23 sweat lodge. It's not like these folks just showed
 04 34 38PM 24 up out of the blue and they were trying to guess.
 04 34 38PM 25 They knew these people were all in a sweat lodge.
 Mina G. Hunt (928) 554-8522

04 34 40PM 1 And the doc says chemical poisoning.
 04 34 46PM 2 And a few days later -- this is, I think,
 04 34 47PM 3 on the 10th. This is two days after. This is a
 04 34 52PM 4 doctor who is treating a live patient who was in
 04 34 54PM 5 the sweat lodge. And he says, patient does not
 04 34 57PM 6 appear to have had heat stroke. And he says it
 04 35 04PM 7 again. The patient does not appear to have had
 04 35 08PM 8 heat stroke.
 04 35 09PM 9 Remember what I told you about that
 04 35 13PM 10 elevated temperature, about severe dehydration?
 04 35 24PM 11 The patient does not appear to have had heat
 04 35 28PM 12 stroke.
 04 35 30PM 13 This is another patient, Lou Caci. We
 04 35 37PM 14 suspect that there were toxic fumes or carbon
 04 35 40PM 15 monoxide. This is the ER doctor, the guy who got
 04 35 44PM 16 his hands on the patient. Not doing an autopsy
 04 35 47PM 17 days later, not looking at a patient who is no
 04 35 50PM 18 longer living. We're dealing with a person who is
 04 35 53PM 19 alive, breathing, who was in the exact same sweat
 04 35 58PM 20 lodge as everybody else. And the doctor says, we
 04 35 59PM 21 suspect there were toxic fumes.
 04 36 03PM 22 With all these red flags, you would
 04 36 05PM 23 think -- before charging a man with killing three
 04 36 08PM 24 people, you would think that folks would follow up
 04 36 13PM 25 on that. They would say hey, doc -- you know --
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04 36 18PM 1 what gives? Is it poisoning?
 04 36 23PM 2 You know what. They weren't questioned
 04 36 28PM 3 by the state. Before they decided to charge
 04 36 31PM 4 Mr. Ray, they didn't talk to these doctors. The
 04 36 36PM 5 state -- they looked in one direction and one
 04 36 41PM 6 direction only.
 04 36 44PM 7 Now, the state says well, despite all
 04 36 49PM 8 this; despite the fact that there were witnesses
 04 36 51PM 9 who said there is poisons, treated wood; despite
 04 36 56PM 10 the fact that there are ER doctors who wrote out
 04 36 59PM 11 files while the patients were in front of them that
 04 37 02PM 12 said we suspect poisoning -- never mind the fact
 04 37 04PM 13 that all these people are adults and can choose.
 04 37 08PM 14 Never mind the fact that you listened to about an
 04 37 10PM 15 hour's worth of tapes from that seminar.
 04 37 13PM 16 And there wasn't a single time you heard
 04 37 15PM 17 Mr. Ray say you can't leave. You got to stay. He
 04 37 21PM 18 didn't sound like a drill sergeant. He didn't have
 04 37 23PM 19 any act of compulsion over any of these folks.
 04 37 29PM 20 Despite that fact, the state wants you to
 04 37 30PM 21 know -- despite the fact there isn't an elevated
 04 37 34PM 22 temperature or dehydration, despite all that, it's
 04 37 38PM 23 heat stroke beyond a reasonable doubt. And Mr. Ray
 04 37 39PM 24 killed these people.
 04 37 40PM 25 Let me ask you something. If you were in
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04 37 43PM 1 charge -- in fact, you should be asking this
 04 37 45PM 2 yourselves -- what would you want to know before
 04 37 50PM 3 you accuse a man of killing three people? Would
 04 38 00PM 4 you want to know whether somebody actually was
 04 38 01PM 5 accidentally poisoned? Would you want to know what
 04 38 05PM 6 they ate? Would you want to know what they drank?
 04 38 08PM 7 Would you want to know what they breathed in?
 04 38 11PM 8 How about their lodgings? Remember that
 04 38 14PM 9 Legionnaires' disease a long time ago in
 04 38 17PM 10 Philadelphia? Bunch of people died because there
 04 38 18PM 11 was something going through the vents. How about
 04 38 22PM 12 where they slept? Did they ingest anything? Would
 04 38 24PM 13 you want to know that?
 04 38 26PM 14 Before you say this man -- this man
 04 38 28PM 15 killed three people, would you want to know that?
 04 38 31PM 16 Would you want to look at the people? Would you
 04 38 35PM 17 want to look at the place where all this stuff
 04 38 39PM 18 happened? Would you want to go get the food, go in
 04 38 43PM 19 the kitchen, see what's in there? Would you want
 04 38 46PM 20 to do that?
 04 38 53PM 21 And the state tells you well, you know
 04 38 55PM 22 what. We did. We collected some things. You're
 04 38 58PM 23 going to hear they took some samples of dirt. They
 04 39 01PM 24 didn't bring it in. They're, like, little film
 04 39 04PM 25 containers of dirt, probably three or four of them.

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04 39 08PM 1 The sweat lodge is probably the size of this room.
 04 39 11PM 2 Okay. So little film containers. They
 04 39 13PM 3 cut four pieces of the tarps about a foot by foot
 04 39 17PM 4 section -- four sectional pieces out of what? I
 04 39 22PM 5 can't do the math, but several hundred square feet.
 04 39 27PM 6 They took some rocks. They took some dirt, as I
 04 39 29PM 7 told you. They took a few pieces of wood and
 04 39 33PM 8 that's it.
 04 39 34PM 9 And you know what happened the next day?
 04 39 36PM 10 This is the very next day after, after, the state
 04 39 41PM 11 collected a bunch of evidence or some evidence.
 04 39 44PM 12 This is less than 48 hours after these folks died.
 04 39 51PM 13 The people who owned the sweat lodge, who own Angel
 04 39 56PM 14 Valley Resort, who stored the tarps, who picked
 04 40 00PM 15 what wood to use, who have the poisons in the shed,
 04 40 04PM 16 who -- all of those things. Those people. You
 04 40 07PM 17 know what they did? They tore it apart. They
 04 40 13PM 18 destroyed the scene.
 04 40 17PM 19 This is the owner right here, guy named
 04 40 19PM 20 Michael Hamilton. In his hand is probably, like, a
 04 40 23PM 21 box cutter. And what he's doing, the evidence will
 04 40 30PM 22 show, is he's cutting up all the tarps and he's
 04 40 35PM 23 getting rid of them. There he is. This is less
 04 40 38PM 24 than 48 hours after three people died on his
 04 40 38PM 25 property. This is them burning what remains less

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04 40 48PM 1 than 48 hours after the accident. And then they
 04 40 55PM 2 raked it clean. It's all gone.
 04 41 05PM 3 You're going to hear evidence that the
 04 41 07PM 4 owners of the resort and the fire tenders were told
 04 41 13PM 5 by the state don't worry. You guys aren't
 04 41 18PM 6 suspects.
 04 41 21PM 7 And, again, I'm not saying they should be
 04 41 24PM 8 suspects. Okay? This is not me saying oh, they're
 04 41 29PM 9 criminals. They're not. They're good folks.
 04 41 33PM 10 Everybody is trying to do the best they can. Okay?
 04 41 38PM 11 This was not a crime. This was an
 04 41 41PM 12 accident. And when you hear all the evidence the
 04 41 44PM 13 state puts on, I want you to keep all this in mind
 04 41 47PM 14 and ask yourselves, what would you want to have
 04 41 50PM 15 seen before you accuse the man of killing three
 04 41 54PM 16 people?
 04 41 55PM 17 You heard some things from the state
 04 42 00PM 18 about testimony about collecting samples, the wood
 04 42 07PM 19 and all those sorts of things. Well, here's an
 04 42 10PM 20 interesting time line. I didn't make one, but
 04 42 13PM 21 maybe you can keep this in your mind.
 04 42 16PM 22 The accident happened on October 8, 2009.
 04 42 21PM 23 Sorry. October 9 the state collects some samples.
 04 42 26PM 24 October 10, the next day, the Hamiltons destroy the
 04 42 31PM 25 scene. A criminalist, this criminalist we're

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04 42 35PM 1 talking about, the CSI person, she started her work
 04 42 38PM 2 on January 20, 2010, so the next year. She starts
 04 42 43PM 3 it.
 04 42 43PM 4 The state charges Mr. Ray with homicide,
 04 42 49PM 5 with killing three people, on February 3, 2010. So
 04 42 53PM 6 what is that? About 13, 14, days after this
 04 42 58PM 7 criminalist starts her work examining -- you
 04 42 58PM 8 know -- some pieces of wood and some of the tarps.
 04 43 01PM 9 I'm not saying that's enough. But she starts her
 04 43 03PM 10 examination of this.
 04 43 04PM 11 She finishes her work on
 04 43 09PM 12 February 4, 2010, the day after Mr. Ray has already
 04 43 13PM 13 been indicted. She sends her report -- by the way,
 04 43 17PM 14 her report concludes that something called
 04 43 19PM 15 "volatiles" were detected on some of the samples.
 04 43 23PM 16 Okay?
 04 43 23PM 17 She sends this report to the detectives
 04 43 25PM 18 on February 5, 2010, two days after Mr. Ray has
 04 43 30PM 19 been charged and arrested. And to this day, or at
 04 43 35PM 20 least as of -- you know -- maybe May or something
 04 43 38PM 21 like that last year, nobody from the state
 04 43 41PM 22 contacted her. Nobody said hey. What's a
 04 43 44PM 23 volatile? I know we only took a few samples. But
 04 43 49PM 24 what did you find?
 04 43 52PM 25 And other evidence. This is her own

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04 43 58PM 1 notes. Evidence returned to property, never
 04 44 01PM 2 opened. No analysis. Would you have wanted to
 04 44 11PM 3 know any of this stuff before you go and charge a
 04 44 21PM 4 man, accuse a man?

04 44 21PM 5 Now, at the end of this case, I expect
 04 44 22PM 6 the Judge is going to give you some instructions.
 04 44 25PM 7 This is part of it. And I expect the Judge is
 04 44 28PM 8 going to tell you that the state must prove beyond
 04 44 32PM 9 a reasonable doubt that a superseding, intervening
 04 44 35PM 10 event did not cause the death.

04 44 37PM 11 What's a superseding, intervening event?
 04 44 40PM 12 That's something that's totally out of the blue,
 04 44 43PM 13 like poisoning. Like you go rent a facility, and
 04 44 50PM 14 they've got poisons in there.

04 44 52PM 15 So the state's got to prove to you -- as
 04 44 55PM 16 you listen to this case, ladies and gentlemen, the
 04 44 58PM 17 state's got -- they're going to put on a lot of
 04 45 01PM 18 witnesses who are going to tell you a lot of
 04 45 04PM 19 different things.

04 45 01PM 20 But as you listen to that evidence, you
 04 45 04PM 21 are going to have to -- the state is going to have
 04 45 06PM 22 to prove to you beyond a reasonable doubt that it
 04 45 11PM 23 wasn't a toxin or something like that, a poison;
 04 45 15PM 24 that with all these clues out there it wasn't a
 04 45 18PM 25 poison.

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04 45 24PM 1 But that's not all. I'm going to make
 04 45 27PM 2 something very clear to you right now, which is the
 04 45 30PM 3 Judge instructed you Mr. Ray doesn't have to put on
 04 45 33PM 4 any evidence at all. That's our system. Best
 04 45 40PM 5 system in the world. Mr. Ray does not have to put
 04 45 43PM 6 on a stitch of evidence. He's presumed innocent.

04 45 46PM 7 We're going to put on some evidence.

04 45 48PM 8 You're going to hear from a medical doctor. His
 04 45 50PM 9 name is Dr. Ian Paul. Dr. Paul is a medical
 04 45 54PM 10 examiner for the State of New Mexico. Okay? So
 04 45 57PM 11 he's not -- he's a guy who works with the police.
 04 46 01PM 12 He testifies for the state.

04 46 03PM 13 He has never, ever worked for the defense
 04 46 08PM 14 team in a criminal case. I'm going to repeat that.
 04 46 13PM 15 Ever. He has never worked for a criminal defense
 04 46 16PM 16 team ever. Not only is he a medical examiner, but
 04 46 23PM 17 he's a certified ER doctor. So he knows not only
 04 46 25PM 18 patients after they passed away, but he has dealt
 04 46 32PM 19 with patients who are living and who are in grave
 04 46 37PM 20 distress.

04 46 38PM 21 He examined all of the medical records in
 04 46 45PM 22 this case. Okay? So he didn't just sort of say
 04 46 48PM 23 it's a sweat lodge. He examined all of the medical
 04 46 51PM 24 records including those records that I just showed
 04 46 51PM 25 you. Okay? And other records as well.

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04 46 54PM 1 And he's going to tell you a lot of
 04 46 55PM 2 different things that are very important. For
 04 46 58PM 3 instance, some of these patients showed up with
 04 47 02PM 4 something called "pinpoint pupils." That's when
 04 47 04PM 5 your pupils are pinpoint. And that is a telltale
 04 47 08PM 6 sign of poisoning.

04 47 10PM 7 So he looked at all of these medical
 04 47 12PM 8 records. He looked at the lab results, looked at
 04 47 14PM 9 all of these things. He says you know what. This
 04 47 17PM 10 doesn't look like heat stroke to me. We didn't
 04 47 21PM 11 have elevated temperatures. We didn't have
 04 47 24PM 12 dehydration. We have all these other indicia,
 04 47 28PM 13 symptoms of poisoning.

04 47 31PM 14 You know what he's going to tell you?
 04 47 33PM 15 He's going to tell you hey, you know what. When
 04 47 36PM 16 you get poisoned, a lot of symptoms you see are --
 04 47 41PM 17 they match almost exactly onto heat stroke.
 04 47 47PM 18 Nausea, vomiting, headache, altered mental states.
 04 47 55PM 19 All of those match right on.

04 47 55PM 20 He's going to tell you, you know what. I
 04 48 02PM 21 would have looked into that. I'm not criticizing
 04 48 08PM 22 anybody. I think I would have looked into that.

04 48 18PM 23 Now I want to address one thing. Now we
 04 48 19PM 24 come to this adults-can't-choose-for-themselves
 04 48 24PM 25 theory, this cult theory. You know, you probably

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04 48 28PM 1 heard it in the state's case barely disguised that
 04 48 31PM 2 Mr. Ray is somehow a cult leader, that somehow he
 04 48 40PM 3 overbore people's will with words, like he's some
 04 48 46PM 4 kind of religious figure. He's not. Okay?

04 48 52PM 5 Here's his business -- oh. You know
 04 48 54PM 6 what. I'm sorry. This is a doctor who has
 04 48 01PM 7 examined the very same dentist that Ms. Polk was
 04 48 05PM 8 talking about. He also was at the same hospital
 04 48 08PM 9 with the two of the folks who passed away. And he
 04 48 12PM 10 says, we did not have a cause for his symptoms or
 04 48 15PM 11 the other people's symptoms that were in the sweat
 04 48 18PM 12 lodge, including the two people that died. They
 04 48 21PM 13 didn't know. Okay? They didn't know.

04 48 35PM 14 To go back to this one point, they didn't
 04 48 38PM 15 know. The doctors didn't know. The ER doctors who
 04 48 40PM 16 had their hands on patients didn't know. The state
 04 48 43PM 17 charged Mr. Ray with consciously, knowingly
 04 48 46PM 18 disregarding a risk.

04 48 50PM 19 How could he have known about a risk that
 04 48 54PM 20 these doctors who are actually touching patients,
 04 48 57PM 21 doing examination, they don't even know? How could
 04 50 02PM 22 he know of a risk that the state can't even prove
 04 50 06PM 23 to you today is what happened? How could you know
 04 50 10PM 24 that?

04 50 10PM 25 Now, I wanted to show you, this is the
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04 50 19PM 1 sort of cult center here. Okay? This is the
 04 50 23PM 2 receptionist area. Mr. Ray ran a company. Okay?
 04 50 28PM 3 It's a company. He had 27 full-time employees.
 04 50 32PM 4 There were IT workers, the receptionist. There
 04 50 36PM 5 were salespeople. There are people who ship the
 04 50 40PM 6 books and things like that.
 04 50 42PM 7 This is a guy who is in People Magazine,
 04 50 45PM 8 not some guru, despite what the media at times has
 04 50 50PM 9 presented him as. He's an author. He doesn't have
 04 50 54PM 10 to be something you want to read. Okay? But he's
 04 50 57PM 11 an author. And what he does is he offers advice.
 04 51 01PM 12 He doesn't claim to talk to God. He
 04 51 05PM 13 doesn't espouse a religion. He doesn't command
 04 51 09PM 14 people to follow him. In fact, what he says is
 04 51 11PM 15 hey. I'm going to suggest to you some ideas. Take
 04 51 15PM 16 what you want. Leave the rest. That's literally
 04 51 19PM 17 out of one of his books.
 04 51 22PM 18 This is the -- you know -- the cubicle
 04 51 27PM 19 area. And Rebecca is being welcomed back to work.
 04 51 31PM 20 This is a series of business cards that Mr. Ray had
 04 51 37PM 21 in his office. You probably can't see it to well,
 04 51 40PM 22 but that says, J. Paul Getty, John Rockefeller,
 04 51 45PM 23 Edison, Hurst, Vanderbilt, Hughes, Henry Ford. And
 04 51 50PM 24 then -- you know -- probably a little
 04 51 51PM 25 presumptuously, but he puts his own business card
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04 51 54PM 1 out there. Okay?
 04 51 55PM 2 That's not a list of gurus, or he doesn't
 04 51 59PM 3 say -- you know -- I don't want to blaspheme. But
 04 52 04PM 4 it doesn't say -- you know -- prophet, prophet,
 04 52 07PM 5 prophet, prophet, prophet, James Ray. Okay? This
 04 52 10PM 6 is not about religion.
 04 52 23PM 7 And here's the program that we dealt with
 04 52 25PM 8 at the Spiritual Warrior Seminar. I want to make
 04 52 29PM 9 one thing really clear right now. You've heard a
 04 52 33PM 10 lot about altered states. Okay? This is not about
 04 52 37PM 11 drugs or booze. There is no drugs, no booze. And
 04 52 43PM 12 Ms. Polk was talking about how -- you know --
 04 52 45PM 13 Mr. Ray had chastised one of the volunteers about
 04 52 49PM 14 drinking? Okay? This is not people taking
 04 52 54PM 15 mushrooms and having visions. Okay? Are we clear
 04 52 57PM 16 about that?
 04 53 02PM 17 Here's what it was: Folks show up. They
 04 53 08PM 18 decide for themselves what they want to fix in
 04 53 09PM 19 their lives. Maybe it's I want to spend more time
 04 53 13PM 20 with my family. I want to be more true to myself.
 04 53 17PM 21 I want to -- whatever. Whatever it might be.
 04 53 23PM 22 Mr. Ray doesn't pick it for them. He
 04 53 26PM 23 doesn't say, oh, you need to be more true to me.
 04 53 29PM 24 These are people who decide for themselves what
 04 53 29PM 25 they want to do with their lives.
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04 53 31PM 1 So they go there and they start off, and
 04 53 33PM 2 they start off and say hey, everybody. My name is
 04 53 36PM 3 Luis Li. I want to spend more time with my family.
 04 53 38PM 4 I want to be more present when my wife is asking me
 04 53 42PM 5 to do things. I want to be a better husband and
 04 53 44PM 6 dad.
 04 53 45PM 7 And then 55 different people get up there
 04 53 50PM 8 and said I want to be in better shape. I want to
 04 53 52PM 9 lose 80 pounds like the nurse did in -- one of the
 04 53 56PM 10 volunteers. I want to lose 80 pounds, spend more
 04 53 59PM 11 time in the outdoors. Everybody chooses for
 04 54 02PM 12 themselves what they want to do.
 04 54 02PM 13 And Mr. Ray says okay. Are you going to
 04 54 06PM 14 commit to that? Okay. And the rest of the seminar
 04 54 07PM 15 is all based to on that. Are you committed to
 04 54 10PM 16 that? And are you committed to that?
 04 54 15PM 17 So then he says okay. We got a guy with
 04 54 20PM 18 a razor, and he's volunteering to cut your hair.
 04 54 24PM 19 Want to cut your hair? Here's what people say:
 04 54 27PM 20 About half the people say yeah, I want to cut my
 04 54 29PM 21 hair. And the other say no, I don't want to cut my
 04 54 33PM 22 hair.
 04 54 33PM 23 Mr. Ray says, that's okay. But let me
 04 54 37PM 24 ask you, if you didn't cut your hair, why didn't
 04 54 40PM 25 you cut your hair? Just think about it. Is it
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04 54 44PM 1 because you're wedded to the way you look or what?
 04 54 48PM 2 Think about it. That's all.
 04 54 47PM 3 Not oh, you didn't cut your hair. Get
 04 54 49PM 4 out of here. You're a failure. None of that.
 04 54 53PM 5 Then they meditate. These are the
 04 54 57PM 6 activities that the state says made all of these
 04 55 01PM 7 adults, people with jobs, families -- you know --
 04 55 06PM 8 vibrant people. These are the activities made all
 04 55 09PM 9 these people unable to choose for themselves,
 04 55 12PM 10 completely devoid of free will.
 04 55 18PM 11 So they meditate. That's one of the
 04 55 20PM 12 altered states. You're going to hear that -- you
 04 55 23PM 13 know -- falling in love, according to Mr. Ray, is
 04 55 26PM 14 also an altered state. It's any state that's not
 04 55 29PM 15 normal.
 04 55 30PM 16 They did yoga. They wrote in their
 04 55 34PM 17 journals about personal things. Tell us about a
 04 55 36PM 18 time where you were ashamed of what you did. And
 04 55 39PM 19 how are we going to fix that? Tell us about
 04 55 42PM 20 something that -- you know -- relationship where
 04 55 44PM 21 you weren't as good as you could have been. How
 04 55 47PM 22 are you going to fix that? That's what they do.
 04 55 50PM 23 Then they did this thing called -- you
 04 55 52PM 24 know -- the "holotropic breathing." This is
 04 55 54PM 25 another altered state. You want to know what that
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04 55 57PM 1 is? That's, basically, no disrespect to the people
 04 56 00PM 2 who do it. This is not for me. This is what they
 04 56 04PM 3 did. They huff and puff, and they get dizzy. And
 04 56 08PM 4 they listen to some really loud music with drums
 04 56 12PM 5 and whatever. Okay?
 04 56 17PM 6 And that getting dizzy and listening to
 04 56 20PM 7 drums and what have you, that's what caused people,
 04 56 23PM 8 according to the state, to stop being like every
 04 56 27PM 9 other American in the United States. That just
 04 56 30PM 10 made it so they couldn't speak for themselves
 04 56 33PM 11 anymore. They couldn't choose. And by the way,
 04 56 37PM 12 this dizzy state is another one of the altered
 04 56 41PM 13 states that Ms. Polk was talking about.
 04 56 43PM 14 And I told you about the Samurai Game.
 04 56 46PM 15 Okay? I told you about that game. It's not a --
 04 56 52PM 16 despite the clips, the little short clips that
 04 56 56PM 17 Ms. Polk played, this is not a game about I am God.
 04 57 00PM 18 Obey me. This is a dumb -- no offense -- but a
 04 57 04PM 19 corporate game.
 04 57 05PM 20 I mean, many of you have probably been in
 04 57 08PM 21 corporations that had to do this too -- close your
 04 57 11PM 22 eyes, fall backward. My wife had to walk around
 04 57 14PM 23 blindfolded. This is what people do now here. And
 04 57 18PM 24 they learn things from it. This is -- this
 04 57 22PM 25 program -- oh. And then the Vision Quest, going
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04 57 24PM 1 out into the desert with a sleeping bag and being
 04 57 27PM 2 out there. And there's no guards. It's not North
 04 57 33PM 3 Korea. You just go out there. You're on your
 04 57 35PM 4 honor system. Don't leave the circle.
 04 57 38PM 5 Who's going to tell if you leave the
 04 57 41PM 6 circle or not? You probably could jump out of the
 04 57 43PM 7 circle, jump back into the circle, jump out of the
 04 57 43PM 8 circle. You could probably walk down -- there is
 04 57 45PM 9 no guards. There's just you. If you want to do
 04 57 48PM 10 it, do it. If you don't want to, don't do it.
 04 57 51PM 11 That was the program.
 04 57 54PM 12 And that's the program that the state
 04 57 56PM 13 says you should ignore the ER doctors. You should
 04 58 02PM 14 ignore the witnesses that are at the scene who are
 04 58 05PM 15 saying hey, I think it was toxins. You should
 04 58 07PM 16 ignore the no elevated temperature, no dehydration.
 04 58 10PM 17 You should ignore all of this, all these
 04 58 12PM 18 inconvenient facts, and deduce that grown people,
 04 58 19PM 19 grown adults, cannot think for themselves and that
 04 58 23PM 20 Mr. Ray controlled them.
 04 58 31PM 21 I want to address one thing right now.
 04 58 40PM 22 This might not be your cup of tea. You know, all
 04 58 45PM 23 this talking about -- you know -- all this stuff.
 04 58 45PM 24 I barely can repeat it. I don't even understand
 04 58 51PM 25 it. It might not be -- you might think it's dumb.
 Mina G. Hunt (928) 554-8522

04 58 58PM 1 You might think it's against your
 04 58 58PM 2 beliefs. You might think it's a waste. You might
 04 59 03PM 3 think it's a waste of money, waste of time. That's
 04 59 08PM 4 okay. Nobody is telling you what to think. It's
 04 59 13PM 5 not for me either.
 04 59 17PM 6 But there is nothing, not a single thing,
 04 59 25PM 7 about those beliefs or activities that's in this
 04 59 30PM 8 book that has the Constitution in it. There is not
 04 59 35PM 9 a single thing about that that criminalizes what a
 04 59 39PM 10 person thinks or wants to do.
 04 59 41PM 11 You know why? Because in America we're
 04 59 43PM 12 allowed to do whatever we want. We can build our
 04 59 46PM 13 communities however we want. We can climb
 04 59 48PM 14 mountains as I -- I want to do it. We can collect
 04 59 55PM 15 guns. We can fix cars. We can have a book club.
 05 00 00PM 16 We can go to church. We can do all these things,
 05 00 04PM 17 whatever those things are, that we think are going
 05 00 06PM 18 to make our lives better. That's our choice as
 05 00 10PM 19 Americans.
 05 00 11PM 20 And there isn't a single word in that
 05 00 14PM 21 book, there isn't a single word in our
 05 00 19PM 22 Constitution, that says you can't chant aloud. You
 05 00 24PM 23 can't huff and puff until your dizzy. You can't go
 05 00 29PM 24 sleep out in the desert by yourself for 36 hours, a
 05 00 33PM 25 day and a half. You can't go sit in a sweat lodge
 Mina G. Hunt (928) 554-8522

05 00 35PM 1 if that's what you want to do. There isn't a
 05 00 37PM 2 single word that says you can't do those things.
 05 00 48PM 3 THE COURT: Mr. Li, about how much longer were
 05 00 51PM 4 you anticipating?
 05 00 53PM 5 MR. LI: Probably 20, 30 minutes, Your Honor.
 05 00 58PM 6 THE COURT: We're going to have to go ahead
 05 00 58PM 7 and take the recess. Thank you, Mr. Li.
 05 01 00PM 8 MR. LI: Thank you, Your Honor.
 05 01 01PM 9 THE COURT: Ladies and gentlemen, we'll do
 05 01 02PM 10 that in a minute. I want to mention something. In
 05 01 07PM 11 the opening statements -- I said this before --
 05 01 10PM 12 evidence is not presented. The attorneys have
 05 01 13PM 13 discussed and played on the CD player what they
 05 01 17PM 14 believe may become evidence.
 05 01 19PM 15 But no evidence has been admitted. There
 05 01 23PM 16 can't be any evidence until a witness is sworn and
 05 01 28PM 17 testifies or perhaps there is a stipulation, maybe
 05 01 29PM 18 an exhibit shown. So I want to make that clear.
 05 01 32PM 19 And I want to clarify also, I got a
 05 01 38PM 20 question from a juror. And I want to say right now
 05 01 40PM 21 how that works. The questions will be presented to
 05 01 47PM 22 witnesses after witnesses testify. The attorneys
 05 01 51PM 23 aren't normally the people who would answer
 05 01 54PM 24 questions.
 05 01 58PM 25 So what's going to happen is after a
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05 01 57PM 1 witness testifies, you will be given an opportunity
 05 02 02PM 2 to write questions. Of course, you're free to
 05 02 05PM 3 write them down as you're listening to the
 05 02 08PM 4 testimony also. But at the end of the attorneys'
 05 02 12PM 5 questioning a witness, that's when the jury
 05 02 13PM 6 questions will be presented.
 05 02 13PM 7 And there will just be one round of jury
 05 02 18PM 8 questions. I want to mention that also. I will
 05 02 18PM 9 take those questions and present them. So I want
 05 02 20PM 10 to clear that up right at the start.
 05 02 22PM 11 So we will go ahead and take the evening
 05 02 24PM 12 recess, then. And I'm going to advise you once
 05 02 28PM 13 again, you are reminded of the admonition not to
 05 02 31PM 14 talk about the case with anyone and not to let
 05 02 33PM 15 anyone talk to you about the case. This includes
 05 02 35PM 16 family members and friends.
 05 02 37PM 17 You may certainly advise people at home
 05 02 42PM 18 and work that you are on a jury. You can tell them
 05 02 44PM 19 about the expected length and schedule for the
 05 02 46PM 20 trial. But beyond those scheduling matters, tell
 05 02 48PM 21 people you cannot say anything more about the case
 05 02 51PM 22 or your jury service until after the trial.
 05 02 53PM 23 When the trial is over and you have been
 05 02 54PM 24 excused as a juror, you will be free to discuss the
 05 02 57PM 25 case and your experiences as a juror. Just because
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05 03 00PM 1 I read these things, I don't want them to lose
 05 03 08PM 2 force in any way. By "these things," I mean the
 05 03 07PM 3 admonition. It's so vital to the system, to this
 05 03 10PM 4 case that, you honor that admonition. That's why I
 05 03 17PM 5 repeat it and it's not just something read off a
 05 03 21PM 6 piece of paper. You have to avoid media exposure.
 05 03 24PM 7 You cannot discuss the case, all those things.
 05 03 27PM 8 So please be back in the jury room at
 05 03 29PM 9 9:00 a.m. There may be some legal matters to take
 05 03 32PM 10 up. So we might not be going within 5 to 10
 05 03 35PM 11 minutes of that time. It may be a bit longer. But
 05 03 37PM 12 I'm still going to ask that you be here at 9:00.
 05 03 38PM 13 Remember the admonition. And take care.
 05 03 41PM 14 I'm going to ask the parties to remain.
 05 03 43PM 15 Thank you.
 05 03 43PM 16 (Proceedings continued outside presence
 05 04 22PM 17 of jury.)
 05 04 22PM 18 THE COURT: Record will show the jury has
 05 04 25PM 19 existed.
 05 04 26PM 20 I did make reference during the
 05 04 28PM 21 preliminary instructions to the March 1 note that I
 05 04 38PM 22 had displayed to both sides regarding the
 05 04 38PM 23 inadvertent exposure. And I'm going to make that
 05 04 40PM 24 part of the record. You both have copies, Mr. Li,
 05 04 44PM 25 Ms. Polk?

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05 04 45PM 1 MS. POLK: Yes, Your Honor.
 05 04 48PM 2 MR. LI: That's fine, Your Honor.
 05 04 47PM 3 THE COURT: That's part of the record. And
 05 04 48PM 4 then also you will have questions. You will have
 05 04 52PM 5 copies of this juror question that was presented
 05 04 57PM 6 and you can see. And what was asked there was
 05 05 00PM 7 actually what would be kind of a routine juror
 05 05 04PM 8 question if there were a witness. But you will get
 05 05 08PM 9 a copy of that, and that will be made part of the
 05 05 10PM 10 record as well.
 05 05 13PM 11 I'm going to ask that the attorneys be
 05 05 15PM 12 here at 8:30 tomorrow morning.
 05 05 18PM 13 And is there anything else you want to
 05 05 20PM 14 take up now?
 05 05 21PM 15 MR. HUGHES: Your Honor, as a housekeeping
 05 05 23PM 16 matter, I provided your clerk with two additional
 05 05 26PM 17 exhibits on that same issue. I'd ask they be
 05 05 28PM 18 sealed for the same reason.
 05 05 31PM 19 THE COURT: That's ordered.
 05 05 33PM 20 MR. HUGHES: And the defense was provided
 05 05 34PM 21 copies as well.
 05 05 34PM 22 MR. LI: That's correct, Your Honor.
 05 05 35PM 23 THE COURT: Anything further?
 05 05 37PM 24 MR. LI: No, Your Honor.
 05 05 38PM 25 MR. HUGHES: No, Your Honor.
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05 05 38PM 1 THE COURT: Court is adjourned. Thank you.
 2 (The proceedings concluded.)
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Mina G. Hunt (928) 554-8522

1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss REPORTER'S CERTIFICATE

3

4 I, Mina G Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action

16 In witness whereof, I have affixed my
17 signature this 18th day of January, 2012

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24 MINA G HUNT, AZ CR No 50619
25 CA CSR No 8335

Mina G Hunt (928) 554-8522

1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE

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4 I, Mina G. Hunt, do hereby certify that I
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22 *Mina G. Hunt*
23 -----
24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335